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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12

13 ROBERT MARSHALL, on behalf of
14 himself and others similarly situated and
aggrieved,

15 Plaintiff,

16

17 vs.

18

19 OS4LABOR LLC, a California limited
liability company; CUSTOM GOODS, LLC,
20 a California limited liability company; and
DOES 1 to 100, inclusive,

21

22 Defendants.

FILED
Superior Court of California
County of Los Angeles

MAY 17 2021

Sherri R. Carter, Executive Officer/Clerk
By Yuliya Tarasyuk, Deputy

Case No.: 20STCV48263

**SECOND AMENDED CLASS ACTION
AND REPRESENTATIVE COMPLAINT**

JURY TRIAL DEMANDED

FAXED

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1 Plaintiff ROBERT MARSHALL, an individual on behalf of himself and all other employees
2 similarly situated and aggrieved, hereby files this Complaint against Defendants OS4LABOR LLC,
3 CUSTOM GOODS, LLC and DOES 1 to 100, inclusive (collectively referred to herein as
4 “Defendants”). Plaintiff is informed and believes, and on the basis of that information and belief, allege
5 as follows:

6 **JURISDICTION AND VENUE**

7 1. Jurisdiction is proper in this court by virtue of the California statutes, decisional law,
8 and regulations, and the local rules under the Los Angeles Superior Court Rules.

9 2. Venue in this Court is proper in that Defendants, and each of them, have a principal
10 business address located in the County of Los Angeles, State of California.

11 **THE PARTIES**

12 3. Plaintiff ROBERT MARSHALL is, and at relevant times was, an individual
13 domiciled in the State of California and a citizen of the State of California who worked as a non-
14 exempt worker for Defendants in the State of California.

15 4. Defendant OS4LABOR LLC (“OS4LABOR”) is a California limited liability
16 company that, at all relevant times, was authorized to do business within the State of California and
17 is doing business in the State of California.

18 5. Defendant CUSTOM GOODS, LLC (“CUSTOM GOODS”) is a California limited
19 liability company that, at all relevant times, was authorized to do business within the State of
20 California and is doing business in the State of California..

21 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
22 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants
23 by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
24 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
25 reflect the true names and capacities of the Doe Defendants when such identities become known.

26 7. Plaintiff is further informed and believes that, at all relevant times, each Defendant
27 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
28 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in

1 interest of some or all of the other Defendants, and was engaged with some or all of the other
2 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
3 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
4 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
5 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
6 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
7 controlled, aided and abetted the conduct of all other Defendants.

8 8. At all relevant times, Defendants were and are legally responsible for all of the
9 unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants
10 are responsible for each of the unlawful acts or omissions complained of herein under the doctrine
11 of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
12 times undertaken as employees of Defendants, acting within the scope of their employment or
13 authority in all of the unlawful activities described herein.

14 **JOINT LIABILITY**

15 9. Under California law, the definition of the terms "to employ" are broadly construed
16 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
17 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
18 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
19 Cal.4th 35, 64 (2010). On reason that the IWC defined "employer" in terms of exercising control
20 was to reach situations in which multiple entities control different aspects of the employment
21 relationship. Supervision of the work, in the specific sense of exercising control over how services
22 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
23 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
24 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

25 10. During Plaintiff's assignment with Defendants CUSTOM GOODS and
26 OS4LABOR, Plaintiff and the Class Members were jointly employed by these Defendants for
27 purposes of the Wage Orders, under the alternative definitions of "to employ" adopted by the
28 California Supreme Court in *Martinez*, supra. As discussed below, both of these Defendants (1)

1 exercised control over wages, hours and working conditions of Plaintiff and the Class Members; (2)
2 suffered or permitted Plaintiff and the Class Members to work for them; and, (3) engaged Plaintiff
3 and the Class Members to work for them.

4 11. In particular, Defendant OS4LABOR hired Plaintiff and entered into a written
5 employment agreement with him. During his employment, OS4LABOR maintained control over
6 many aspects of Plaintiff's employment, including, among other things, having the authority to
7 discipline him, change his job assignment, change his work hours, change his rates of pay, and to
8 terminate his employment.

9 12. In addition, when he was first hired, Defendant OS4LABOR provided Plaintiff with
10 orientation and training materials. Defendant OS4LABOR issued Plaintiff written policies
11 concerning his meal periods, rest breaks, timekeeping, hours worked, and payment of his wages,
12 with which Plaintiff was required to comply. Among other things, these policies provided that
13 Plaintiff's weekly time cards be submitted to Defendant OS4LABOR, and, Defendant OS4LABOR
14 was supposed to process his time cards and pay him for all hours he worked. Defendant OS4LABOR
15 exercised ultimate control over the payment of Plaintiff's wages, as Defendant OS4LABOR issued
16 Plaintiff his paychecks. Finally, Defendant OS4LABOR directed Plaintiff to comply with all of
17 Defendant CUSTOM GOODS' policies and directions when he was assigned to work at CUSTOM
18 GOODS. Plaintiff is informed and believes that Defendant OS4LABOR exercised the same control
19 over, applied the same policies and practices, and engaged in the same acts and omissions with
20 regard to the other Class Members.

21 13. Defendant CUSTOM GOODS similarly suffered or permitted Plaintiff to work for
22 CUSTOM GOODS or engaged Plaintiff to work for CUSTOM GOODS. Plaintiff is informed and
23 believes that Defendant CUSTOM GOODS entered into a written agreement with Defendant
24 OS4LABOR, pursuant to which Defendant CUSTOM GOODS paid Defendant OS4LABOR to
25 provide it with workers, including Plaintiff, to conduct Defendants CUSTOM GOODS business
26 operation. Defendant CUSTOM GOODS suffered or permitted Plaintiff to work at CUSTOM
27 GOODS for the entirety of his tenure.

28 14. During his assignment, Defendant CUSTOM GOODS further exercised control over

1 Plaintiff's wages, hours and working conditions. Among other things, Defendant CUSTOM
2 GOODS: (1) set Plaintiff's work hours and provided him with his work schedule; (2) provided
3 Plaintiff with written policies regarding his meal periods and rest breaks, with which Plaintiff was
4 required to comply; (3) directly supervised Plaintiff's work through its employees; (4) assigned
5 Plaintiff his job duties and trained him on his job duties; (5) reprimanded and counseled Plaintiff
6 regarding his work performance and other issues; (6) exercised authority to end Plaintiff's work
7 assignment at any time, which essentially equated to a termination of employment as OS4LABOR
8 did not guarantee other job assignments; (7) required Plaintiff to use its timekeeping system for
9 purposes of recording his time; (8) determined if and when Plaintiff would receive meal periods and
10 rest breaks; (9) subjected Plaintiff to unlawful schedules for taking meal periods and rest breaks;
11 (10) was responsible for recording when Plaintiff began and ended his shifts. Defendant CUSTOM
12 GOODS issued further written policies and practices and guidelines governing Plaintiff's working
13 conditions with which he was required to comply. Plaintiff is informed and believes that Defendant
14 CUSTOM GOODS exercised the same control over, applied the same policies and practices, and
15 engaged in the same acts and omissions with regard to the other Class Members.

16 **DEFENDANT CUSTOM GOODS' LIABILITY UNDER CALIFORNIA LABOR CODE**

17 **SECTION 2810.3**

18 15. California Labor Code section 2810.3(b)(1) provides that "a client employer shall
19 share with the labor contractor all civil legal responsibility and civil liability for all workers supplied
20 by that labor contractor for . . . the payment of wages." A "labor contractor" means "an individual
21 or entity that supplies, either with or without a contract, a client employer with workers to perform
22 labor within the client employer's usual course of business." Cal. Labor Code § 2810.3(a)(3). A
23 "client employer" is "a business entity, regardless of its form, that obtains or is provided workers to
24 perform labor within its usual course of business from a labor contractor." Cal. Labor Code §
25 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
26 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors
27 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). "Usual course of business"
28 means "the regular and customary work of a business, performed within or upon the premises or

1 worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

2 16. Defendant OS4LABOR is a “labor contractor” in that it supplies client employer,
3 Defendant CUSTOM GOODS, with workers to perform labor within Defendant CUSTOM
4 GOODS’ usual course of business, namely the importing and exporting of goods.

5 17. Defendant CUSTOM GOODS is a “client employer” as it obtains or is provided
6 workers to perform labor within its usual course of business from labor contractors, including
7 Defendant OS4LABOR. Defendant CUSTOM GOODS has a workforce of more than twenty
8 workers and each is supplied with at least five workers from a labor contract at any given time.

9 18. Under California Labor Code Section 2810.3, Defendant CUSTOM GOODS, client
10 employer, share with the labor contractor, Defendant OS4LABOR, all civil legal responsibility and
11 civil liability for all workers supplied by that labor contractor for the payment of wages.

12 19. Plaintiff complied with Labor Code Section 2810.3 by mailing certified a letter
13 outlining the substance of the allegations alleged herein to the “Client Employer,” namely Defendant
14 CUSTOM GOODS, thirty (30) days before filing suit.

15 **CLASS ALLEGATIONS**

16 20. Plaintiff brings this action as a class action under Code of Civil Procedure section
17 382 on behalf of himself and all others similarly situated. The classes Plaintiff seeks to represent is
18 defined as follows: “All hourly paid, non-exempt workers who were directly employed by
19 CUSTOM GOODS in California at any time within the four years prior to the filing of the initial
20 complaint; and all hourly paid, non-exempt employees, staffed/assigned by Defendant OS4LABOR
21 to work at CUSTOM GOODS, in California at any time within the four years prior to the filing of
22 the initial complaint.”

23 a. Numerosity: While the exact number of Class Members is unknown to Plaintiff
24 at this time, the class is so numerous that the individual joinder of all members is
25 impractical under the circumstances of this case.

26 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
27 because common questions of law and fact predominate over individual issues.

28 Common questions include, but are not limited to, the following: (1) whether

1 Defendants provided Plaintiff and the Class Members with all meal periods or
2 premium payments in lieu thereof in compliance with California law; (2) whether
3 Defendants provided Plaintiff and the Class Members with all rest periods, or
4 premium payments in lieu thereof, in compliance with California law; (3)
5 whether Defendants failed to pay Plaintiff and the Class Members all owed
6 minimum wages in compliance with California law; (4) whether Defendants
7 failed to pay Plaintiff and the Class Members all sick leave time benefits in
8 compliance with California law (5) whether Defendants failed to pay Plaintiff
9 and the Class Members all owed overtime wages in compliance with California
10 law; (6) whether Defendants provided Plaintiff and the Class Members with
11 accurate, itemized wage statements in compliance with California law; (7)
12 whether Defendants timely paid Plaintiff and the Class Members all wages due
13 during their employment and upon separation of employment; (8) whether
14 Defendants maintained accurate records of all hours worked and all owed meal
15 periods; and (9) whether Defendants violated California Business and
16 Professions Code sections 17200, et seq.

- 17 c. Ascertainable Class. The proposed class is ascertainable as its members can be
18 identified and located using information in Defendants' business, payroll and
19 personnel records.
- 20 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all
21 members is impractical under the circumstances of this case. While the exact
22 number of Class Members is unknown to Plaintiff, Plaintiff is informed and
23 believes the class consists of at least 100 individuals.
- 24 e. Typicality. Plaintiff's claims are typical of the claims of the Class Members.
25 Plaintiff suffered a similar injury as the other Class Members as a result of
26 Defendants' common practices regarding, inter alia, failure to provide proper
27 meal and rest periods or premium compensation in lieu thereof, failure to provide
28 all owed minimum and overtime wages, failure to provide accurate wage

1 statements, and failure to pay all wages due upon termination. In addition,
2 Plaintiff will fairly and adequately protect the interests of the Class Members.
3 Plaintiff has no interests adverse to the interests of the other Class Members.

4 f. Superiority. A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy since individual joinder of all members
6 of the class is impractical. Class action treatment will permit a large number of
7 similarly situated persons to prosecute their common claims in a single forum
8 simultaneously, efficiently, and without the unnecessary duplication of effort and
9 expense that numerous individual actions would engender. Furthermore, as the
10 damages suffered by each individual member of the class may be relatively small,
11 the expenses and burden of individual litigation would make it difficult or
12 impossible for individual members of the class to redress the wrongs done to
13 them, while an important public interest will be served by addressing the matter
14 as a class action. The cost to the court system of adjudication of such
15 individualized litigation would be substantial. Individualized litigation would
16 also present the potential for inconsistent or contradictory judgments. Finally,
17 the alternative of filing a claim with the California Labor Commissioner is not
18 superior, given the lack of discovery in such proceedings, the fact that there are
19 fewer available remedies, and the losing party has the right to a trial de novo in
20 the Superior Court.

21 **FACTUAL ALLEGATIONS**

22 21. During the four-year period preceding filing of this complaint, Plaintiff and each of
23 the Class Members and Aggrieved Employees were jointly employed by Defendants in the State of
24 California as non-exempt, hourly paid workers. Defendants at all times exercised control over
25 Plaintiff and each of the Class Members and Aggrieved Employees, and suffered and/or permitted
26 them to work.

27 22. Plaintiff was hired by Defendant OS4LABOR in or about July 2019, and was
28 immediately assigned to work for Defendant CUSTOM GOODS. Plaintiff worked for CUSTOM

1 GOODS as an hourly, paid non-exempt worker, moving storage containers among CUSTOM
2 GOODS' three California warehouses that were in close proximity to each other. Plaintiff spent the
3 majority of his time at CUSTOM GOODS' warehouse yards, coordinating the drop off/pick up of
4 empty and full containers. Plaintiff typically worked eight (8) hours per day, five (5) days per week,
5 but would often work Saturdays, such that he would often work six (6) days per week.

6 23. Defendants paid Plaintiff on a weekly basis. He was paid on August 3, 2019 for work
7 performed between July 22, 2019-July 28, 2019. He was paid on August 9, 2019 for work performed
8 between July 29, 2019-August 4, 2019. He was paid on August 16, 2019 for work performed
9 between August 5, 2019-August 11, 2019. He was paid on August 23, 2019 for work performed
10 between August 12, 2019-August 18, 2019. He was paid on August 30, 2019 for work performed
11 between August 19, 2019-August 25, 2019. He was paid on September 6, 2019 for work performed
12 between August 26, 2019-September 1, 2019. He was paid on September 13, 2019 for work
13 performed between September 2, 2019-September 8, 2019. He was paid on September 20, 2019 for
14 work performed between September 9, 2019-September 15, 2019. He was paid on September 27,
15 2019 for work performed between September 16, 2019-September 22, 2019. He was paid on
16 October 4, 2019 for work performed between September 23, 2019-September 29, 2019. He was paid
17 on October 11, 2019 for work performed between September 30, 2019-October 6, 2019. He was
18 paid on October 18, 2019 for work performed between October 7, 2019-October 13, 2019. Plaintiff's
19 last pay check was paid on October 25, 2019 for work performed between October 14, 2019-October
20 20, 2019.

21 24. Plaintiff does not possess copies of his time records, which, on information and
22 belief, are solely in the control of Defendants OS4LABOR and CUSTOM GOODS. Once these time
23 records are obtained from Defendants, Plaintiff will be able to ascertain his work hours with more
24 specificity. On information and belief, Plaintiff alleges he worked a continuous period of more than
25 five hours on the following days, entitling him to at least one meal period and at least one rest period:
26 July 22, 2019, July 23, 2019, July 24, 2019, July 25, 2019, July 26, 2019, July 27, 2019, July 28,
27 2019, July 29, 2019, July 30, 2019, July 31, 2019, August 1, 2019, August 2, 2019, August 3, 2019,
28 August 4, 2019, August 5, 2019, August 6, 2019, August 7, 2019, August 8, 2019, August 9, 2019,

1 August 10, 2019, August 11, 2019, August 12, 2019, August 13, 2019, August 14, 2019, August 15,
2 2019, August 16, 2019, August 17, 2019, August 18, 2019, August 19, 2019, August 20, 2019,
3 August 21, 2019, August 22, 2019, August 23, 2019, August 24, 2019, August 25, 2019, August 26,
4 2019, August 27, 2019, August 28, 2019, August 29, 2019, August 30, 2019, August 31, 2019,
5 September 1, 2019, September 2, 2019, September 3, 2019, September 4, 2019, September 5, 2019,
6 September 6, 2019, September 7, 2019, September 8, 2019, September 16, 2019, September 17,
7 2019, September 18, 2019, September 19, 2019, September 20, 2019, September 21, 2019,
8 September 22, 2019, September 23, 2019, September 24, 2019, September 25, 2019, September 26,
9 2019, September 27, 2019, September 28, 2019, September 29, 2019, September 30, 2019, October
10 1, 2019, October 2, 2019, October 3, 2019, October 4, 2019, October 5, 2019, October 6, 2019,
11 October 7, 2019, October 8, 2019, October 9, 2019, October 10, 2019, October 11, 2019, October
12 12, 2019, October 13, 2019, October 14, 2019, October 15, 2019, October 16, 2019, October 17,
13 2019, October 18, 2019, October 19, 2019, October 20, 2019.

14 25. Defendant OS4LABOR required Plaintiff to obey Defendant CUSTOM GOODS'
15 policies and direction from CUSTOM GOODS' supervisors. Defendant CUSTOM GOODS'
16 required Plaintiff to remain vigilant and responsive to his radio/walkie talkie during his meal breaks
17 and rest breaks. Each day Plaintiff worked, Plaintiff was required by Defendants to remain vigilant
18 and responsive to radio/walkie talkie during his meal breaks and rest breaks. On information and
19 belief, Plaintiff was not relieved of his duties or employer control to remain responsive to
20 radio/walkie talkie calls for his meal breaks and rest breaks on the following days: July 22, 2019,
21 July 23, 2019, July 24, 2019, July 25, 2019, July 26, 2019, July 27, 2019, July 28, 2019, July 29,
22 2019, July 30, 2019, July 31, 2019, August 1, 2019, August 2, 2019, August 3, 2019, August 4,
23 2019, August 5, 2019, August 6, 2019, August 7, 2019, August 8, 2019, August 9, 2019, August 10,
24 2019, August 11, 2019, August 12, 2019, August 13, 2019, August 14, 2019, August 15, 2019,
25 August 16, 2019, August 17, 2019, August 18, 2019, August 19, 2019, August 20, 2019, August 21,
26 2019, August 22, 2019, August 23, 2019, August 24, 2019, August 25, 2019, August 26, 2019,
27 August 27, 2019, August 28, 2019, August 29, 2019, August 30, 2019, August 31, 2019, September
28 1, 2019, September 2, 2019, September 3, 2019, September 4, 2019, September 5, 2019, September

1 6, 2019, September 7, 2019, September 8, 2019, September 16, 2019, September 17, 2019,
2 September 18, 2019, September 19, 2019, September 20, 2019, September 21, 2019, September 22,
3 2019, September 23, 2019, September 24, 2019, September 25, 2019, September 26, 2019,
4 September 27, 2019, September 28, 2019, September 29, 2019, September 30, 2019, October 1,
5 2019, October 2, 2019, October 3, 2019, October 4, 2019, October 5, 2019, October 6, 2019, October
6 7, 2019, October 8, 2019, October 9, 2019, October 10, 2019, October 11, 2019, October 12, 2019,
7 October 13, 2019, October 14, 2019, October 15, 2019, October 16, 2019, October 17, 2019,
8 October 18, 2019, October 19, 2019, October 20, 2019.

9 26. Defendant CUSTOM GOODS was aware Plaintiff was not relieved of all duties, as
10 CUSTOM GOODS would call Plaintiff over the radio/walkie talkie, interrupting his meal and rest
11 breaks, and prioritize work in the warehouse over Plaintiff's meal and rest break rights. Because
12 Defendants required Plaintiff to monitor his radio/walkie talkie during his meal and rest periods,
13 Plaintiff's meal and rest periods were rendered on-duty. As a result, Defendants failed to relieve
14 Plaintiff of all duties and relinquish all control over how he spends his meal and rest breaks, in
15 violation of California law. *See Augustus v. ABM Services, Inc.* (2016) 2 Cal.5th 257, 260; *Brinker*
16 *Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th 1004, 1038-1039. Plaintiff did not execute a
17 written on-duty meal period or waiver agreement. Plaintiff did not receive premium pay for these
18 unprovided meal periods.

19 27. In the alternative, Plaintiff, Class Members, and the Aggrieved Employees were
20 often forced to take late meal periods and/or work through their meal periods or any purported taken
21 meal periods would be interrupted/cut short due to the nature and constraints of their job duties and
22 commentary from supervisors instructing them to take non-compliant breaks or none at all. Plaintiff,
23 Class Members, and the Aggrieved Employees were not paid for time spent clocked out for meal
24 breaks. Defendants implemented a policy and practice of automatically deducting at least thirty
25 minutes per shift for purported meal periods, despite having actual and/or constructive knowledge
26 that Plaintiff and the Aggrieved Employees did not receive timely, compliant, uninterrupted meal
27 periods, resulting in underpayment of minimum wages and overtime pay. Plaintiff, Class Members,
28 and the Aggrieved Employees were also required to monitor walkie talkies and/or cell phones during

1 their meal and rest periods, rendering these meal and rest periods to be on-duty.

2 28. In the alternative, Plaintiff, Class Members and the Aggrieved Employees were
3 regularly required to perform off-the-clock work by virtue of Defendants' time-shaving/time-
4 rounding policy. Upon information and belief, Defendants maintained a policy and practice of time-
5 shaving/time-rounding requiring Plaintiff, Class Members, and the Aggrieved Employees to
6 "round" the start and stop times of their hours worked and/or only input their scheduled start and
7 stop time, rather than actual hours worked. Defendants' time-shaving/time-rounding policies and
8 practices as applied worked to detrimentally shave and round time off from Plaintiff's, Class
9 Members' and Aggrieved Employees' workdays. On information and belief, through the operation
10 of Defendant's time-shaving/time-rounding system, Plaintiff, Class Members, and the Aggrieved
11 Employees were systematically deprived of compensable time because the time-recording system
12 implemented by Defendants would understate actual compensable work time. Upon information
13 and belief, Defendants had actual or constructive knowledge that its time-shaving/time-rounding
14 policy resulted in underpaying Plaintiff, Class Members, and the Aggrieved Employees the wages
15 they were owed.

16 29. This automatic-deduction policy for meal periods and time-shaving system,
17 implemented by and through Defendants, resulted in violations of California's minimum and
18 overtime wage laws.

19 30. In the alternative, Defendant OS4LABOR's policies required Plaintiff to follow their
20 CUSTOM GOODS' supervisor's scheduling of rest breaks. Defendant OS4LABOR's policies
21 failed to authorize and permit rest breaks that were free from all work duties and employer control
22 for a net ten minutes of rest for every four hours worked or major fraction thereof. Neither Defendant
23 OS4LABOR nor CUSTOM GOODS' supervisors relieved Plaintiff, the Class Members, and
24 Aggrieved Employees of all duties for rest breaks, as the rest break policies indicate they would. On
25 information and belief, these rest break policies also applied to the Class Members and Aggrieved
26 Employees.

27 31. In the alternative, Defendants OS4LABOR and CUSTOM GOODS required Plaintiff
28 to work through and/or cut short his rest periods to keep up with the demands of his work duties.

1 On information and belief, Class Members and Aggrieved Employees were also required to work
2 through and/or cut short their rest periods to keep up with the demands of their work duties.

3 32. In the alternative, Plaintiff, Class Members, and the Aggrieved Employees were also
4 not permitted to leave the premises during any purported rest periods, resulting in a rest period that
5 was not relieved of all duties or employer control. *See Augustus v. ABM Services, Inc.* (2016) 2
6 Cal.5th 257, 260; *Brinker Restaurant Corp. v. Superior Court* (2012), 53 Cal.4th 1004, 1038-1039.

7 33. Plaintiff did not receive premium pay for any of these unprovided meal periods or
8 rest periods. On information and belief, the Class Members and Aggrieved Employees did not
9 receive premium pay for any unprovided meal periods or rest periods.

10 34. Plaintiff was not relieved of his duties or employer control to remain responsive to
11 radio/walkie talkie calls for his unpaid meal breaks on the following days: July 22, 2019, July 23,
12 2019, July 24, 2019, July 25, 2019, July 26, 2019, July 27, 2019, July 28, 2019, July 29, 2019, July
13 30, 2019, July 31, 2019, August 1, 2019, August 2, 2019, August 3, 2019, August 4, 2019, August
14 5, 2019, August 6, 2019, August 7, 2019, August 8, 2019, August 9, 2019, August 10, 2019, August
15 11, 2019, August 12, 2019, August 13, 2019, August 14, 2019, August 15, 2019, August 16, 2019,
16 August 17, 2019, August 18, 2019, August 19, 2019, August 20, 2019, August 21, 2019, August 22,
17 2019, August 23, 2019, August 24, 2019, August 25, 2019, August 26, 2019, August 27, 2019,
18 August 28, 2019, August 29, 2019, August 30, 2019, August 31, 2019, September 1, 2019,
19 September 2, 2019, September 3, 2019, September 4, 2019, September 5, 2019, September 6, 2019,
20 September 7, 2019, September 8, 2019, September 16, 2019, September 17, 2019, September 18,
21 2019, September 19, 2019, September 20, 2019, September 21, 2019, September 22, 2019,
22 September 23, 2019, September 24, 2019, September 25, 2019, September 26, 2019, September 27,
23 2019, September 28, 2019, September 29, 2019, September 30, 2019, October 1, 2019, October 2,
24 2019, October 3, 2019, October 4, 2019, October 5, 2019, October 6, 2019, October 7, 2019, October
25 8, 2019, October 9, 2019, October 10, 2019, October 11, 2019, October 12, 2019, October 13, 2019,
26 October 14, 2019, October 15, 2019, October 16, 2019, October 17, 2019, October 18, 2019,
27 October 19, 2019, October 20, 2019. Because Plaintiff was clocked out for his unpaid meal periods,
28 he was not paid for the time Defendants required Plaintiff to remain responsive to the radio/walkie

1 talkie. Defendants knew or had constructive knowledge of this off-the-clock work, as Defendants
2 required Plaintiff to respond to Defendants' calls on the radio/walkie talkie, knowing Plaintiff was
3 on an unpaid meal break. On information and belief, Plaintiff's unpaid meal breaks were
4 approximately 30 minutes for each day he worked. Therefore, Plaintiff is owed approximately 30
5 minutes in at least minimum wages for each day he clocked out for an unpaid meal break while
6 remaining under the duty and Defendants' control to respond to the radio/walkie talkie, in an amount
7 according to proof at trial. Therefore, Plaintiff is owed at least minimum wages for the time he spent
8 clocked out for unpaid meal periods, but not relieved of the duty to respond to his radio/walkie
9 talkie, in an amount according to proof at trial.

10 35. Defendants further failed to keep and maintain accurate time records showing
11 accurate total daily hours worked or accurate start and end times for Plaintiff's meal breaks. On
12 information and belief, Defendants failed to keep and maintain accurate time records showing
13 accurate total daily hours worked or accurate start and end times for Plaintiff's meal breaks on the
14 following dates: July 22, 2019, July 23, 2019, July 24, 2019, July 25, 2019, July 26, 2019, July 27,
15 2019, July 28, 2019, July 29, 2019, July 30, 2019, July 31, 2019, August 1, 2019, August 2, 2019,
16 August 3, 2019, August 4, 2019, August 5, 2019, August 6, 2019, August 7, 2019, August 8, 2019,
17 August 9, 2019, August 10, 2019, August 11, 2019, August 12, 2019, August 13, 2019, August 14,
18 2019, August 15, 2019, August 16, 2019, August 17, 2019, August 18, 2019, August 19, 2019,
19 August 20, 2019, August 21, 2019, August 22, 2019, August 23, 2019, August 24, 2019, August 25,
20 2019, August 26, 2019, August 27, 2019, August 28, 2019, August 29, 2019, August 30, 2019,
21 August 31, 2019, September 1, 2019, September 2, 2019, September 3, 2019, September 4, 2019,
22 September 5, 2019, September 6, 2019, September 7, 2019, September 8, 2019, September 16, 2019,
23 September 17, 2019, September 18, 2019, September 19, 2019, September 20, 2019, September 21,
24 2019, September 22, 2019, September 23, 2019, September 24, 2019, September 25, 2019,
25 September 26, 2019, September 27, 2019, September 28, 2019, September 29, 2019, September 30,
26 2019, October 1, 2019, October 2, 2019, October 3, 2019, October 4, 2019, October 5, 2019, October
27 6, 2019, October 7, 2019, October 8, 2019, October 9, 2019, October 10, 2019, October 11, 2019,
28 October 12, 2019, October 13, 2019, October 14, 2019, October 15, 2019, October 16, 2019,

1 October 17, 2019, October 18, 2019, October 19, 2019, October 20, 2019. On information and
2 belief, Defendants also failed to keep and maintain accurate time records showing accurate total
3 daily hours worked or accurate start and end times for Class Members' and Aggrieved Employees'
4 meal breaks. On information and belief, Defendants' failure to maintain accurate records of total
5 hours worked by Plaintiffs, Class Members, and the Aggrieved Employees was willful and
6 deliberate.

7 36. According to Plaintiff's payroll records, Plaintiff worked overtime and received
8 overtime pay on multiple pay periods, including: August 5, 2019 – August 11, 2019; August 26,
9 2019 – September 1, 2019; September 16, 2019 – September 22, 2019; September 23, 2019 –
10 September 29, 2019; September 30, 2019 – October 6, 2019; October 7, 2019 – October 13, 2019.

11 37. Plaintiff worked over 5 hours overtime between September 23, 2019 and September
12 29, 2019, for a total of 42 hours in this pay period, which was paid on October 4, 2019. On
13 information and belief, Plaintiff alleges he clocked out for a meal break on the following days:
14 September 23, 2019, September 24, 2019, September 25, 2019, September 26, 2019, September 27,
15 2019, September 28, 2019, and September 29, 2019. Plaintiff was not relieved of his duties or
16 employer control to remain responsive to radio/walkie talkie calls for his unpaid meal breaks on
17 these days. On information and belief, Plaintiff's meal breaks were approximately 30 minutes each
18 day he worked. Therefore, because Plaintiff's total hours worked in this pay period are over 40
19 hours, any hours worked above 40 is entitled to overtime wages. As a result, Plaintiff is owed
20 overtime wages for the time he spent clocked out for unpaid meal periods, but not relieved of all
21 duties or employer control to remain responsive to radio/walkie talkie calls for this pay period. On
22 information and belief and according to proof at trial, this would result in approximately 3.5 hours
23 of overtime unpaid during the September 23, 2019 – September 29, 2019 pay period. On information
24 and belief, Plaintiff is entitled to overtime wages for time spent remaining on duty or subject to
25 Defendants' control while clocked out for an unpaid meal break where Plaintiff's total hours worked
26 were in excess of 40 per week or 8 per day, in an amount according to proof at trial.

27 38. In the alternative, Plaintiff, the Class Members and the Aggrieved Employees were
28 regularly required to perform off-the-clock work by virtue of Defendants' policies, automatic-

1 deduction policy for meal periods, as well as its time-shaving/time-rounding policy. On information
2 and belief, the work time reported by Plaintiff, Class Members, and the Aggrieved Employees was
3 similarly automatically deducted for at least 30 minutes of wages every day they worked for
4 Defendants for meal breaks not taken, interrupted, or not relieved of all duties and employer control.
5 Upon information and belief, Defendants maintained a policy and practice of time-shaving/time-
6 rounding requiring Plaintiff, Class Members, and the Aggrieved Employees to “round” the start and
7 stop times of their hours worked and/or only input their scheduled start and stop time, rather than
8 actual hours worked. Defendants’ time-shaving/time-rounding policies and practices as applied
9 worked to detrimentally shave and round time off from Plaintiff’s, Class Members’, and Aggrieved
10 Employees’ workdays. On information and belief, through the operation of Defendant’s time-
11 shaving/time-rounding system, Plaintiff, Class Members, and the Aggrieved Employees were
12 systematically deprived of compensable time because the time-recording system implemented by
13 Defendants would almost always, if not always, understate actual compensable work time. Upon
14 information and belief, Defendants had actual or constructive knowledge that its time-shaving/time-
15 rounding policy resulted in underpaying Plaintiff, Class Members, and Aggrieved Employees the
16 wages they were owed. This automatic-deduction policy for meal periods and time-shaving system,
17 implemented by and through Defendants, resulted in violations of California’s minimum and
18 overtime wage laws.

19 39. During his employment, Plaintiff failed to receive accurate wage statements in
20 compliance with Labor Code section 226. Among other things, Plaintiff’s paystubs did not
21 accurately reflect, *inter-alia*, the total hours worked in each pay period. The total hours did not
22 include the time Plaintiff spent clocked out for meal breaks for which he remained under
23 Defendants’ control and subject to work duties. In the alternative, Plaintiff’s paystubs did not
24 accurately reflect the total hours worked in each pay period, as Plaintiff’s time punches were
25 rounded to Plaintiff’s detriment. On information and belief, Class Members’ and Aggrieved
26 Employees’ paystubs similarly did not accurately reflect the total hours worked for each pay period.
27 Accordingly, Defendants have violated Labor Code section 226.

28 40. Plaintiff’s employment with Defendants ended on or about October 16, 2019, yet

1 Defendants did not provide Plaintiff with his final pay check until the next regular pay date/next pay
2 period such that Plaintiff's final payroll check was not timely provided to Plaintiff. Moreover,
3 Plaintiff's final pay check, once provided, did not include all remuneration owed to him as it was
4 devoid of all owed minimum and overtime wages, as described herein. On information and belief,
5 those Class Members and Aggrieved Employees who terminated their employment with Defendants
6 also did not receive their final payroll checks until the next regular pay date/next pay period and
7 their paychecks were similarly devoid of all owed minimum and overtime wages, as described
8 herein.

9 41. Plaintiff is informed and believes that Defendants OS4LABOR and CUSTOM
10 GOODS engaged in these same herein described unlawful practices with regard to all of the Class
11 Members and Aggrieved Employees, and that Defendants applied these same herein described
12 unlawful practices to all of its employees that it applied to Plaintiff, regardless of whether the Class
13 Members and Aggrieved Employees were assigned to work for Defendant CUSTOM GOODS by
14 Defendant OS4LABOR, or any other temporary/staffing agency, or directly hired by CUSTOM
15 GOODS.

16 **FIRST CAUSE OF ACTION**

17 **(Recovery of Unpaid Minimum Wages and Liquidated Damages -** 18 **Labor Code §§ 510, 1194 and 1194.2)**

19 29. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

20 30. California law provides employees in California must be paid for all hours worked,
21 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As
22 alleged herein, Plaintiff and the Class Members regularly worked hours for which they were not
23 compensated by Defendants as required by California law.

24 31. Defendants have a continuous and consistent policy of clocking-out Plaintiff and
25 those similarly situated for a thirty (30) minute meal period, even though Plaintiff and Class
26 Members worked through their meal periods. They were required to perform off-the-clock work by
27 virtue of what was essentially an automatic-deduction policy for meal periods, *to wit*: Plaintiff and
28 the Class Members would be required to work through all or part of their meal periods while being

1 required to clock out thirty minutes per shift for these non-compliant meal periods, resulting in
2 significant off-the-clock work/unpaid work hours. Upon information and belief, Defendants had
3 actual or constructive knowledge of this off-the-clock work. Defendants owe Plaintiff and Class
4 Members at least the minimum wage for this time worked, resulting in unpaid minimum wages.

5 32. Defendants have maintained a policy and practice of time-shaving/time-rounding
6 requiring Plaintiff and the Aggrieved Employees to “round” the start and stop times of their hours
7 worked and/or only input their scheduled start and stop time, rather than actual hours worked.
8 Defendants’ time-shaving/time-rounding policies and practices as applied worked to detrimentally
9 shave and round time off from Plaintiff’s and Aggrieved Employees’ workdays. On information and
10 belief, through the operation of Defendant’s time-shaving/time-rounding system, Plaintiff and the
11 Aggrieved Employees were systematically deprived of compensable time because the time-
12 recording system implemented by Defendants would almost always, if not always, understate actual
13 compensable work time. Upon information and belief, Defendants had actual or constructive
14 knowledge that its time-shaving/time-rounding policy resulted in underpaying Plaintiff and
15 Aggrieved Employees the wages they were owed.

16 33. Defendants have had a continuous policy of not paying Plaintiff and those similarly
17 situated for all hours worked.

18 34. Plaintiffs and the Class Members are informed and believe and thereon allege that as
19 a direct result of Defendants’ uniform policies and/or practices, Plaintiff and the Class Members
20 have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and
21 expenses and attorneys’ fees in seeking to compel Defendants to fully perform their obligations
22 under state law, all to their respective damage in amounts, according to proof at trial.

23 35. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members
24 are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus
25 attorney’s fees and costs, in an amount to be proved at trial.

26 **SECOND CAUSE OF ACTION**

27 **(Recovery of Unpaid Overtime – Labor Code §510)**

28 36. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

1 37. California law provides employees in California must be paid overtime, equal to 1.5
2 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day,
3 and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt.
4 As alleged herein, Plaintiff and the Class Members worked overtime hours for which they were not
5 compensated by Defendants as required by California law. They were required to perform off-the-
6 clock work, *to wit*: Plaintiff and the Class Members would be required to work through all or part
7 of their meal periods while being required to clock out thirty minutes per shift for these non-
8 compliant meal periods, resulting in significant off-the-clock work/unpaid work hours.

9 38. Defendants have maintained a policy and practice of time-shaving/time-rounding
10 requiring Plaintiff and the Aggrieved Employees to "round" the start and stop times of their hours
11 worked and/or only input their scheduled start and stop time, rather than actual hours worked.
12 Defendants' time-shaving/time-rounding policies and practices as applied worked to detrimentally
13 shave and round time off from Plaintiff's and Aggrieved Employees' workdays. On information and
14 belief, through the operation of Defendant's time-shaving/time-rounding system, Plaintiff and the
15 Aggrieved Employees were systematically deprived of compensable time because the time-
16 recording system implemented by Defendants would almost always, if not always, understate actual
17 compensable work time. Upon information and belief, Defendants had actual or constructive
18 knowledge that its time-shaving/time-rounding policy resulted in underpaying Plaintiff and
19 Aggrieved Employees the wages they were owed.

20 39. Defendants have had a continuous policy of not paying Plaintiff and those similarly
21 situated for all hours worked.

22 40. Given Plaintiff and the Class Members' typical work schedules, Defendants' policies
23 and practices resulted in significant denied overtime wages to Plaintiff and the Class Members.
24 Defendants owe Plaintiff and the Class Members overtime wages for this work and the addition of
25 such hours would require payment at an overtime rate.

26 41. Plaintiff and the Class Members are entitled to recover all unpaid overtime wages,
27 plus attorney's fees and costs, in an amount to be proved at trial.
28

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof --**

3 **Labor Code § 226.7)**

4 42. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

5 43. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
6 Plaintiff and the Class Members with one 30-minute meal break free from all duties for all shifts
7 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than
8 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an
9 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
10 required meal period may be waived by mutual consent of the employer and employee, and (2) if
11 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
12 the required second meal period may be waived by mutual consent of the employer and employee,
13 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
14 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
15 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
16 period, it is presumed no meal period was provided.

17 44. Plaintiff and Class Members regularly worked periods of more than five and ten
18 hours in a workday without being provided with lawful mandatory thirty-minute, duty-free meal
19 periods. Each day Plaintiff worked, Plaintiff was required by Defendants to remain vigilant and
20 responsive to radio/walkie talkie during his meal breaks. Plaintiff and Class Members were regularly
21 unable to take timely, thirty-minute uninterrupted first meal periods. They were unable to avail
22 themselves of such breaks for various reasons, including, their workload and commentary from
23 supervisors pressuring Plaintiff and the Class Members to take non-compliant breaks, or none at all.
24 Upon information and belief, Defendants failed to maintain a company meal period policy compliant
25 with California law. Defendants also failed to pay Plaintiff and Class Members an additional hour
26 of wages at their regular rates of pay for each workday a meal period was not provided. Defendants
27 required Plaintiff and Class Members to clock out for these non-compliant/missed meal periods,
28 resulting in significant off-the-clock work.

45. Defendants failed to provide Plaintiff and the Class Members with all required meal periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff and the Class Members are entitled to one additional hour's pay for each day a meal period was missed, late or interrupted, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods or Compensation in Lieu Thereof --

Labor Code § 226.7)

46. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

47. California law requires an employer to authorize or permit an employee to take a rest period of ten minutes for every four hours worked, or major fraction thereof, and such rest periods must be in the middle of the four-hour period insofar as practicable. If the employer fails to provide any required rest periods, or fails to provide a fully compliant rest break of 10 minutes whether the employee is fully relieved of all duties and all employer control, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday the employer did not provide a legally required and/or fully compliant rest period.

48. Defendants employed policies and procedures that ensured Plaintiff and other Class Members would not receive all legally required rest periods, as Defendants did not authorize nor permit all required rest periods in strict accordance to, and in compliance with, the timing requirements of all applicable Wage Orders. Defendants failed to relieve Plaintiff and Class Members of all duties and all employer control for purposes of taking any rest breaks. Plaintiff and Class Members regularly worked enough hours to be entitled to at least two (2) rest breaks in a shift, which Defendants failed to allow for. Similar to meal breaks, Plaintiff and the Class Members were not able to avail themselves of their due rest breaks for various reasons, including, the pressures from their workloads and the lack of relief workers available, commentary from superiors requiring them to take shorter breaks than they were entitled to or no breaks at all.

49. Defendants failed to maintain a company rest period policy compliant with California law. Per Defendant's illegal rest period policy/practice, Plaintiff and Class Members were not relieved of their duties nor permitted to leave the premises for purposes of taking any rest

1 periods. Defendants further employed policies and procedures ensuring Plaintiff and Class Members
2 did not receive premium wages to compensate them for workdays they did not receive all legally
3 required and fully compliant rest periods.

4 50. Defendants failed to provide Plaintiff and the Class Members with all required rest
5 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff
6 and the Class Members are entitled to one additional hour's pay for each day a rest break was missed,
7 late or interrupted, all in an amount to be proved at trial.

8 **FIFTH CAUSE OF ACTION**

9 **(Failure to Provide Accurate Wage Statements – Labor Code § 226)**

10 51. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

11 52. Labor Code section 226(a) provides, in relevant part, that “[a]n employer,
12 semimonthly or at the time of each payment of wages, shall furnish to his or him employee, either
13 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
14 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
15 gross wages earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6)
16 the inclusive dates of the period for which the employee is paid . . . , (8) the name and address of
17 the legal entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate by the employee”

19 53. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result
20 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
21 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
22 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
23 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
24 an award of costs and reasonable attorney’s fees.

25 54. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision
26 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
27 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

55. Defendants knowingly and intentionally failed to provide Plaintiff and other Class Members with proper, itemized wage statements as the wage statements provided by Defendants do not accurately reflect, *inter alia*, the total hours worked in the pay period. As a result, Plaintiff and the Class Members were injured. Accordingly, Plaintiff and the Class Members are entitled to damages and penalties.

SIXTH CAUSE OF ACTION

(Failure to Timely Pay Wages During Employment and Upon Separation of Employment)

56. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

57. Plaintiff terminated his employment with Defendants. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendants, Defendants did not timely pay all wages owed, at the applicable minimum and overtime rates, at the time of his termination.

58. On information and belief, numerous Class Members are no longer employed by Defendants. They were either fired or quit Defendants' employ. Defendants did not pay all timely wages owed at the time of their termination.

59. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

60. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

61. Labor Code section 203 provides that, if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

62. Defendants failed to pay Plaintiff a sum certain at the time of his termination or within seventy-two (72) hours of his resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code section 203, Plaintiff is entitled to a penalty in the amount of his daily wage, multiplied by thirty (30) days.

63. When Plaintiff and those Class Members who are former employees of Defendants separated from Defendants' employ, Defendants willfully failed to pay all straight time wages and overtime wages owed at the time of termination.

64. Defendants' failure to pay said wages to Plaintiff and Class Members, was willful in that Defendants knew the wages to be due, but failed to pay them.

65. As a consequence of Defendants' willful conduct in not paying wages owed at the time of separation from employment, Plaintiff and Class Members are entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203, together with interest thereon and attorneys' fees and costs.

66. Defendants also systematically pays final wages at the end of the final pay period rather than on the final day of work or the statutorily mandated time to pay final wages under California law. Plaintiff and the Class Members therefore seeks damages and penalties.

SEVENTH CAUSE OF ACTION

(Failure to Maintain Accurate Records)

67. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

68. California Labor Code sections 226 and 1174-75 require an employer to keep accurate records of all hour an employee works.

69. California Labor Code section 1174(d) requires employers “keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to...employees employed at the respective plants or establishments...”

70. California Labor Code section 1174.5 provides that “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil

1 penalty of five hundred dollars (\$500).”

2 71. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep
3 accurate records showing when an employee begins and ends each meal period.

4 72. Plaintiff is informed and believes that Defendants failed to maintain accurate records
5 in compliance with these statutes. Among other things, as alleged herein, Defendants failed to record
6 the true hours worked and the true start and stop times of all meal periods owed to Plaintiff and the
7 Class Members. As a result, Plaintiff and the Class Members were injured.

8 73. Plaintiff and the Class Members therefore seek damages and penalties as a result of
9 these violations.

10 **EIGHTH CAUSE OF ACTION**

11 **(Violation of Unfair Competition Law – Bus. & Prof. Code § 17200, et seq.)**

12 74. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 75. Defendants’ failure, *inter alia*, to pay all minimum and overtime wages earned,
14 failure to provide all required meal and rest periods or compensation in lieu thereof, failure to
15 maintain accurate records, failure to timely pay wages, and failure to provide accurate itemized wage
16 statements, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or
17 fraudulent business act or practice, in violation of Business & Professions Code sections 17200, et
18 seq.

19 76. Pursuant to Business & Professions Code section 17203, Plaintiff and the Class
20 Members are entitled to restitution of all unpaid wages and other sums owed, plus attorney’s fees
21 and costs, in an amount to be proved at trial.

22 **NINTH CAUSE OF ACTION**

23 **(Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)**

24 77. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 78. On or around April 30, 2020, Plaintiff gave timely written notice by certified mail to
26 Defendants of the violations of various provisions of the California Labor Code as alleged in this
27 complaint and filed notice of the violations online with the Labor and Workforce Development
28 Agency (“LWDA”).

1 79. The LWDA did not provide notice of its intention to investigate Defendants'
2 violations after expiration of the 65-day waiting time period, or at any time. Defendants also failed
3 to cure within the time allotted by PAGA. Accordingly, Plaintiff has exhausted administrative
4 remedies prior to pursuing the instant lawsuit and Plaintiff's right to file the instant lawsuit then
5 duly accrued.

6 80. Plaintiff is an "Aggrieved Employee" under PAGA, as he was employed by
7 Defendants during the applicable statutory limitations period and suffered one or more of the Labor
8 Code violations set forth herein. "...PAGA allows an 'aggrieved employee' – a person affected by
9 at least one Labor Code violation committed by an employer – to pursue penalties for all the Labor
10 Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018)
11 23 Cal.App.5th 745, 751. Accordingly, Plaintiff seeks to recover on behalf of himself and all other
12 current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable
13 attorney's fees and costs. Plaintiff brings this action on behalf of himself and all similarly situated
14 aggrieved employees. **The other Aggrieved Employees shall be defined as follows:**

15 (a) All hourly paid, non-exempt workers who were directly employed by
16 CUSTOM GOODS in California at any time within the one year and sixty-five days prior to the
17 filing of this Complaint; and

18 (b) All hourly paid, non-exempt workers, staffed/assigned by Defendant
19 OS4LABOR to work at CUSTOM GOODS., in California, at any time within the one year and
20 sixty-five days prior to the filing of the initial complaint.

21 81. Plaintiff seeks to recover the PAGA civil penalties through a representative action
22 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
23 969. Therefore, class certification of the PAGA claims is not required.

24 82. Therefore, under the provisions of PAGA and Labor Code sections 201-202, 203,
25 216, 221-223, 226, 226.7, 226.8, 233-234, 256, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199,
26 2810, and 2810.5, and all applicable Wage Orders as well as all interpretations of these laws by
27 California Courts and administrative bodies, as well as any other law that is enforceable through
28 PAGA, Defendants are liable for the following penalties:

- 1 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
2 relevant California Labor Code provisions listed herein only if permitted by the
3 PAGA statute; and
4 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
5 violations without a civil penalty recoverable under the PAGA, all in the default
6 amounts provided by Labor Code section 2699(f).
7 c. The proper measure of penalties under PAGA is the number of violations,
8 whether those violations were committed as against Plaintiff or any Aggrieved
9 Employee, whether a party to this action or not.

10 83. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
11 Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

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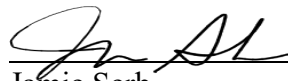
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of himself, the
3 Class Members and Aggrieved Employees:

- 4 1. For an order that the action, be certified as a class action;
5 2. For an order that Plaintiff, be appointed class representative;
6 3. For an order that counsel for Plaintiff be appointed class counsel;
7 4. For compensatory damages according to proof;
8 5. For an order requiring Defendants to make restitution of all amounts wrongfully
9 withheld from Plaintiff and the class;
10 6. For pre-judgment interest as permitted by law;
11 7. For civil penalties according to proof, including PAGA penalties;
12 8. Attorney's fees and costs reasonably incurred; and
13 9. Such other and further relief that the Court deems just and proper.

14
15
16 Dated: May 17, 2021

CROSNER LEGAL, PC

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19 Jamie Serb

Attorneys for Plaintiff

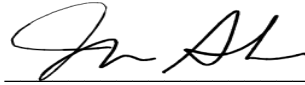
ROBERT MARSHALL

DEMAND FOR JURY TRIAL

Plaintiff, ROBERT MARSHALL, demands a trial by jury on all claims so triable.

Dated: May 17, 2021

CROSNER LEGAL, P.C.



Jamie Serb
Attorneys for Plaintiff
ROBERT MARSHALL

1 PROOF OF SERVICE
2 *ROBERT MARSHALL VS. OS4LABOR LLC, et al.*
3 *Los Angeles County Superior Court Case No. 20STCV48263*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On May 17, 2021, I served true copies of the following document(s) described as

8 **SECOND AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT**

9 **JURY TRIAL DEMANDED**

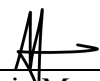
10 on the interested parties in this action as follows:

11 SEE ATTACHED SERVICE LIST

12 ☒ BY ELECTRONIC TRANSMISSION. BYELECTRONIC TRANSMISSION. Pursuant to
13 the Court's Order re Electronic Service, I caused the documents described above to be E-Served
14 through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere
15 to the addressee(s) listed

16 I declare under penalty of perjury under the laws of the United States of America that the foregoing
17 is true and correct and that I am employed in the office of a member of the bar of this Court at
18 whose direction the service was made.

19 Executed on May 17, 2021, at Los Angeles, California.

20 
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22 Maria Monterrey
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PROOF OF SERVICE

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SERVICE LIST

ROBERT MARSHALL VS. OS4LABOR LLC, et al.

Los Angeles County Superior Court Case No. 20STCV48263

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