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Superior Court of California  
County of Los Angeles

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FAXED

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

IRVIN MURILLO, individually and on behalf  
of all others similarly situated,

Plaintiff,

vs.

SKY CHEFS, INC. DBA. LSG SKY CHEFS, a  
Texas Corporation; JOHN RUTJES, an  
individual; and DOES 1-50, Inclusive,

Defendants.

CASE NO. 20STCV22905

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:

- (1) FAILURE TO PAY MINIMUM  
WAGE AND OVERTIME FOR  
ALL HOURS WORKED;
- (2) FAILURE TO PAY CORRECT  
OVERTIME RATES;
- (3) FAILURE TO PROVIDE MEAL  
PERIODS;
- (4) FAILURE TO PROVIDE REST  
BREAKS;
- (5) FAILURE TO PROVIDE SICK  
TIME/NOTICE OF SICK TIME;
- (6) FAILURE TO PROVIDE  
ACCURATE WAGE  
STATEMENTS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; AND,
- (9) VIOLATIONS OF PRIVATE  
ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

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COMES NOW, Plaintiff IRVIN MURILLO ("Plaintiff"), on behalf of himself and all other non-exempt employees and others similarly situated, hereby alleges as follows:

### **INTRODUCTION**

1. This is a civil action seeking recovery for violations of the California Labor Code ("Labor Code"), California Business and Professions Code ("B&PC"), the applicable Wage Order issued by the California Industrial Welfare Commission (hereinafter, the "IWC Wage Order"), the California Private Attorneys General Act ("PAGA"), the and related common law principles by Defendants SKY CHEFS, INC ("SCI") and JOHN RUTJES.

2. Plaintiff seeks monetary damages, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices, civil penalties, interest and attorney's fees.

3. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of the original Complaint herein, up to and through the time of trial for this matter ("Class Period") although this should not automatically be considered the statute of limitations for any cause of action herein

### **THE PARTIES**

4. Plaintiff is an individual residing in the State of California

5. Defendant SCI is a Texas corporation duly licensed to conduct business in the State of California.

6. On information and belief, Defendant JOHN RUTJES is a natural person residing in the State of Texas and is, and at all relevant times has been, the owner, director, officer, employee, and/or managing agent of SCI, with direct control and power over the working conditions and the violations at issue in this First Amended Complaint ("FAC") and at all relevant times was acting on behalf of SCI and responsible, in whole or in part, for the unlawful policies and practices at issue in this FAC and "caused" these violations to occur; and, may therefore be held liable for such conduct under Labor Code sections 558.1 and 1197.1.

7. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 50 but will amend this FAC when that information becomes known.

8. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship.

## **JURISDICTION AND VENUE**

9. The Court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Plaintiff was employed in this judicial district, Defendant transacts business in this district, and some of the complained of conduct occurred in this district.

## GENERAL ALLEGATIONS

10. SCI is one of the largest and oldest catering companies in the world, primarily serving the airline industry by providing meals for in-flight dining. It delivers over 560 million meals a year and is present at 205 airports in 53 countries.

11. Plaintiff was employed by SCI as a Cook from approximately October 16, 2019 – January 6, 2020.

12. During his employment, Defendants subjected Plaintiff to numerous policies and practices that violate California law, including the following:

13. Defendants failed to pay Plaintiff for all of the hours that he worked. Defendants subjected Plaintiff to a written policy and practice that required him to don and doff his uniform off the clock in violation of California law. Defendants further required Plaintiff to frequently work during a portion of his meal break while off the clock due to the nature of business. In addition, Defendants utilized a non-neutral rounding or time shaving policy that failed to compensate Plaintiff for all hours he worked.

14. Defendants failed to provide Plaintiff with compliant meal periods under California law. Defendant subjected Plaintiff to a written policy and practice that prohibited him from leaving his worksite during meal periods. Defendants also utilized unlawful meal period waivers. Defendants failed to provide Plaintiff with timely, uninterrupted duty-free meal periods on numerous occasions. Defendants frequently interrupted Plaintiff's meal periods and required him

1 to continue working off the clock during his meal period.

2 15. Defendants failed to provide Plaintiff with compliant rest breaks under California  
3 law. Defendants subjected Plaintiff to a written policy and practice that prohibited him from  
4 leaving his worksite during his rest breaks. Defendants also failed to utilize a rest break policy that  
5 provides for rest breaks every four hours of work, “or major fraction thereof.” Defendants subjected  
6 Plaintiff to a written policy and practice that required him to combine his rest periods into a single,  
7 twenty-minute rest break in violation of California law.

8 16. Defendants failed to provide Plaintiff with sick time and/or to provide Plaintiff with  
9 written notice of his available sick leave on his wage statement or in a separate writing on his pay  
10 dates.

11 17. Defendants failed to include all appropriate forms of remuneration in Plaintiff’s  
12 regular rate for purposes of calculating his overtime pay and sick pay, including “market adjustment  
13 rates” and other non-discretionary bonuses. Consequently, Plaintiff was not paid the correct  
14 overtime rates and sick pay rates.

15 18. Defendants failed to issue Plaintiff accurate wage statements that correctly stated,  
16 among other thing, his total hours worked, total overtime hours worked, rates of pay, available sick  
17 pay, total gross wages, and total net wages.

18 19. Defendant willfully failed to pay Plaintiff all wages that were due and owing upon  
19 separation of employment.

20 **CLASS ACTION ALLEGATIONS**

21 20. Plaintiff brings this Class Action under Code of Civil Procedure section 382 on  
22 behalf of himself and all others similarly situated who were employed by Defendant at any time  
23 from four years prior to filing the Complaint to present (“Class Period”).

24 21. Plaintiff is informed and believes that Defendant subjected the Class and the Sub-  
25 Classes, described below, to the same unlawful policies, practices and conduct during the Class  
26 Period.

27 22. The Class and Sub-Classes that Plaintiff seeks to represent is defined as follows:

28 (a) **The Class:** All non-exempt employees employed by SCI in the State of

1 California at any time within four years prior to the filing of the Complaint;

2 (b) **Regular Rate Sub-Class:** All non-exempt employees employed by SCI in the  
3 State of California at any time within four years prior to the filing of the Complaint, for whom  
4 Defendants failed to include “market adjustment rates” or other non-discretionary bonuses or pay  
5 into their regular rates of compensation;

6 (c) **Sick Pay Wage Statement Sub-Class:** All non-exempt employees employed  
7 by SCI in the State of California at any time within four years prior to the filing of the Complaint,  
8 for whom Defendants failed to include their available sick pay on their wage statements in  
9 violation of California Labor Code section 246(i); and,

10 (d) **Waiting Time Penalty Sub-Class:** All former non-exempt employees  
11 employed by SCI in the State of California at any time within four years prior to the filing of the  
12 Complaint.

13 23. Ascertainable Class. The proposed Class and Sub-Classes are ascertainable in that  
14 its members can be identified and located using information contained in Defendant’s payroll and  
15 personnel records.

16 24. Common Questions of Law and Fact. This lawsuit is suitable for class treatment  
17 because common questions of law and fact predominate over individual issues. Common questions  
18 include, but are not limited to, the following: (1) whether Defendants subjected the Class to an  
19 unlawful policy that required them to don and doff their uniforms and protective gear off the clock;  
20 (2) whether Defendants paid the Class for time spent working off the clock during their meal  
21 periods; (3) whether Defendants subjected the Class to an unlawful, non-neutral rounding or time  
22 shaving policy; (4) whether Defendants provided the Class with all required meal periods and rest  
23 breaks, or compensation in lieu thereof, in compliance with California law; (5) whether Defendants  
24 subjected the Class to an unlawful policy and practice that required them to remain on premises  
25 during meal periods and rest breaks; (6) whether Defendants failed to utilize a rest break policy in  
26 compliance with California law; (7) whether Defendants incorporated market rate adjustments and  
27 non-discretionary bonuses into the regular rate for purposes of calculating and paying overtime for  
28 the Regular Rate Sub-Class; (8) whether Defendants provide the Sick Pay Sub-Class with require

1 sick leave and notice of their available sick leave; (9) whether Defendants provided the Class with  
2 accurate, itemized wage statements; (10) whether Defendants timely paid the Waiting Time Penalty  
3 Sub-Class all wages due upon separation of employment; (11) whether Defendants' failure to  
4 timely pay all wages due upon separation of employment was willful; and, (12) whether Defendants  
5 violated California Business and Professions Code §§ 17200, et seq.

6 25. Numerosity. The Class is so numerous that the individual joinder of all members is  
7 impractical under the circumstances of this case. While the exact number of Class Members is  
8 unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least 100 individuals.

9 26. Typicality. Plaintiff's claims are typical of the claims of the Class Members.  
10 Plaintiff suffered a similar injury as the other Class Members as a result of Defendants' common  
11 practices regarding, *inter alia*, calculation and payment of wages, including failure to pay for off  
12 the clock work, failure to pay minimum and overtime wages, failure to provide meal breaks or  
13 compensation in lieu thereof, provision of wage statements, failure to reimburse business expenses,  
14 and payment of wages due upon termination. In addition, Plaintiff will fairly and adequately protect  
15 the interests of the Class Members. Plaintiff has no interests adverse to the interests of the other  
16 Class Members.

17 27. Superiority. A class action is superior to other available means for the fair and  
18 efficient adjudication of this controversy since individual joinder of all members of the class is  
19 impractical. Class action treatment will permit a large number of similarly situated persons to  
20 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
21 unnecessary duplication of effort and expense that numerous individual actions would engender.  
22 Furthermore, as the damages suffered by each individual member of the class may be relatively  
23 small, the expenses and burden of individual litigation would make it difficult or impossible for  
24 individual members of the class to redress the wrongs done to them, while an important public  
25 interest will be served by addressing the matter as a class action. The cost to the court system of  
26 adjudication of such individualized litigation would be substantial. Individualized litigation would  
27 also present the potential for inconsistent or contradictory judgments. Finally, the alternative of  
28 filing a claim with the California Labor Commissioner is not superior, given the lack of discovery

1 in such proceedings, the fact that there are fewer available remedies, and the losing party has the  
2 right to a trial de novo in the Superior Court.

3 **FIRST CAUSE OF ACTION**

4 **(Failure to Pay for All Hours Worked)**

5 28. Plaintiff incorporates by reference the preceding paragraphs.

6 29. Labor Code section 510(a) provides, in relevant part, that: “[a]ny work in excess of  
7 eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be  
8 compensated at the rate of no less than one and one-half times the regular rate of pay for any  
9 employee.”

10 30. Labor Code section 1194(a) provides that, “[n]otwithstanding any agreement to  
11 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
12 overtime compensation applicable to the employee is entitled to recover in a civil action the  
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
14 interest thereon, reasonable attorney’s fees, and costs of suit.”

15 31. Labor Code section 1194.2(a) provides that; “[i]n any action under Section 98,  
16 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the  
17 minimum wage fixed by an order of the commission or by statute, an employee shall be entitled  
18 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest  
19 thereon.”

20 32. Labor Code section 510(a) provides in relevant part that “[a]ny work in excess of  
21 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first  
22 eight hours worked on the seventh day of work in any one workweek shall be compensated at the  
23 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in  
24 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular  
25 rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of  
26 a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an  
27 employee.”

28 33. Defendant violated the foregoing statutes by failing to pay Plaintiff and the Class

1 for all hours that they worked during the Class Period. As discussed herein, Defendant  
2 maintained a written policy that required Plaintiff and the Class to don and doff their uniforms  
3 and protective gear off the clock. As a result, Plaintiff and the Class did not receive  
4 compensation for this daily change time during which they were under Defendant's control in  
5 violation of California law, and have been damaged in amount to be established at trial.

6 34. In addition, Defendant required Plaintiff and the Class to frequently work during  
7 their meal periods, while clocked out for work, for which time they failed to receive  
8 compensation. As a result, Plaintiff and the Class have been damaged in amount to be established  
9 at trial.

10 35. Defendant further failed to compensate Plaintiff and the Class for all hours worked  
11 during the Class Period by, among other things, using a rounding system that, as applied, worked  
12 to detrimentally shave and round time off from Plaintiff's and Class' workdays. Plaintiff alleges  
13 on information and belief that through the operation of Defendant's rounding system, as well as  
14 time spent working off the clock, Plaintiff and Class would systematically be deprived of  
15 compensable hours worked because the time recording system implemented by Defendant would  
16 almost always, if not always, understate actual hours worked due to the rounding.

17 36. Pursuant to Labor Code sections 1194, 1194.2 and 512, Plaintiff and the Class are  
18 entitled to recover all unpaid wages and liquidated damages, plus attorney's fees and costs, in an  
19 amount to be determined at trial.

## 20 **SECOND CAUSE OF ACTION**

### 21 **(Failure to Pay Correct Overtime Rate)**

22 37. Plaintiff incorporates by reference the preceding paragraphs.

23 38. Under California law, employers must include bonuses, commissions, and other  
24 forms of non-discretionary pay in calculating the "regular rate" for purposes of computing  
25 overtime (*See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.) "An  
26 employee's 'regular rate of pay' for purposes of Labor Code section 510 . . . is not the same as the  
27 employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which  
28 can change from pay period to pay period, includes adjustments to the straight time rate,

1 reflecting, among other things, shift differentials and the per-hour value of any non-hourly  
2 compensation the employee has earned.” (*Alvarado v. Dart Container Corp.* (2018) 4 Cal.5th  
3 542, 553.)

4 39. During the Class Period, Defendant failed to include non-discretionary pay,  
5 including “market rate adjustments” in calculating Plaintiff and the Class’ regular rates.

6 40. As a result, Plaintiff and the Class Members received overtime pay at a rate that  
7 was less than to which they were entitled under California law, and have been damages in amount  
8 to be established at trial.

### 9 **THIRD CAUSE OF ACTION**

#### 10 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof)**

11 41. Plaintiff incorporates by reference the preceding paragraphs.

12 42. Labor Code section 512 provides that “[a]n employer may not employ an  
13 employee for a work period of more than five hours per day without providing the  
14 employee with a meal period of not less than 30 minutes, except that if the total work  
15 period per day of the employee is no more than six hours, the meal period may be waived  
16 by mutual consent of both the employer and employee. An employer may not employ an  
17 employee for a work period of more than 10 hours per day without providing the  
18 employee with a second meal period of not less than 30 minutes, except that if the total  
19 hours worked is no more than 12 hours, the second meal period may be waived by mutual  
20 consent of the employer and the employee only if the first meal period was not waived.”

21 43. Labor Code section 226.7(b) provides that “[a]n employer shall not require  
22 an employee to work during a meal or rest or recovery period mandated pursuant to an  
23 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare  
24 Commission, the Occupational Safety and Health Standards Board, or the Division of  
25 Occupational Safety and Health.”

26 44. Labor Code section 226.7(c) provides that “[i]f an employer fails to provide  
27 an employee a meal or rest or recovery period in accordance with a state law, including,  
28 but not limited to, an applicable statute or applicable regulation, standard, or order of the

1 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or  
2 the Division of Occupational Safety and Health, the employer shall pay the employee one  
3 additional hour of pay at the employee's regular rate of compensation for each workday  
4 that the meal or rest or recovery period is not provided."

5 45. Labor Code section 516 provides that the Industrial Welfare Commission  
6 "may adopt or amend working condition orders with respect to break periods, meal  
7 periods, and days of rest for any workers in California consistent with the health and  
8 welfare of those workers."

9 46. The applicable IWC Wage Order provides that unless the employee is  
10 relieved of all duty during a 30 minute meal period, the meal period shall be considered an  
11 "on duty" meal period and counted as time worked. An "on duty" meal period shall be  
12 permitted only when the nature of the work prevents an employee from being relieved of  
13 all duty and when by written agreement between the parties an on-the-job paid meal  
14 period is agreed to. The written agreement shall state that the employee may, in writing,  
15 revoke the agreement at any time.

16 47. The applicable IWC Wage Order further provides that if an employer fails  
17 to provide an employee a meal period in accordance with the applicable provisions of this  
18 order, the employer shall pay the employee one (1) hour of pay at the employee's regular  
19 rate of compensation for each workday that the meal period is not provided.

20 48. During the Class Period, Defendants failed to provide Plaintiff and the Class with  
21 an opportunity to take compliant meal periods and to provide them with premium pay for all meal  
22 periods were not provided. Plaintiffs and the Class were not provided with timely first meal  
23 periods, were frequently interrupted during their meal periods and required to perform work, and  
24 were not provided with second meal periods. Defendants further required Plaintiff and the Class  
25 Members were to remain at work during their meal periods. Defendants further utilized meal  
26 period waivers that fail to comply with California law.

27 49. Defendants are therefore liable to Plaintiff and the Class for one hour of additional  
28 pay at the regular rate of compensation for each workday that the proper meal period was not

provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus pre-judgment interest.

#### **FOURTH CAUSE OF ACTION**

##### **(Failure to Provide Rest Periods or Compensation in Lieu Thereof)**

50. Plaintiff incorporates by reference the preceding paragraphs.

51. The applicable IWC Wage Order provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest break time shall be counted as hours worked for which there shall be no deduction from wages.

52. The applicable IWC Wage Order further provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

53. Labor Code section 226.7(b) provides that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

54. Labor Code section 226.7(c) provides that "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

55. Defendants failed to provide Plaintiff and the Class all required, timely rest breaks and failed to pay premium wages to Plaintiff and the Class for each workday they did not receive all legally required rest breaks. Defendants further required Plaintiff and the Class to remain at work during their rest breaks. SCI's rest break policy is also facially non-compliant, and does not include the "or major fraction thereof" language.

56. Defendants are therefore liable to Plaintiff and the Class for one hour of additional pay at the regular rate of compensation for each workday that a required rest break was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage Order, plus pre-judgment interest.

## **FIFTH CAUSE OF ACTION**

**(Failure to Provide Sick Time and/or Notice of Sick Time)**

57. Plaintiff incorporates by reference the preceding paragraphs.

58. Labor Code section 246(a)(1) provides, in relevant part, that “[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

59. Labor Code section 246(b)(1) provides “[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.”

60. Labor Code section 246(i) provides, in relevant part, “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.

61. During the Class Period, Plaintiff is informed and believes that Defendants failed to provide Plaintiff and the Class with required sick time and/or failed to provide notice of available sick time on wages statements or in separate writings on pay dates.

62. As a result, Plaintiff and the Class Members have been injured and are entitled to damages subject to proof at trial.

## SIXTH CAUSE OF ACTION

**(Failure to Provide Accurate Wage Statements)**

63. Plaintiff incorporates by reference the preceding paragraphs.

64. Labor Code section 226(a) provides, in relevant part, that: “[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer. . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . . “

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

66. During the Class Period, Defendants intentionally failed to provide Plaintiff and the Class with accurate wage statements in compliance with Labor Code section 226, including failing to correctly state (1) the total hours worked, (2) the total overtime hours worked, (3) the

1 applicable rates of pay, (4) premium pay for missed meal periods and rest breaks, and, (5) the  
2 gross and net wages earned.

3 67. As a result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered  
4 injury. The absence of accurate information on their wage statements has prevented earlier  
5 challenges to Defendants' unlawful pay practices, will require discovery and mathematical  
6 computations to determine the amount of wages owed, and will cause difficulty and expense in  
7 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of  
8 inaccurate information about wages and amounts deducted from wages to state and federal  
9 government agencies. As a result, Plaintiff and the Class are required to participate in this lawsuit  
10 and create more difficulty and expense for Plaintiff and the Class from having to reconstruct time  
11 and pay records than if Defendants had complied with their legal obligations.

12 68. Pursuant to California Labor Code section 226(e), Plaintiffs and the Class are  
13 entitled to recover fifty dollars per employee for the initial pay period in which a Section 226  
14 violation occurred and one hundred dollars per employee per violation for each subsequent pay  
15 period, not to exceed an aggregate penalty of four thousand dollars per employee.

16 69. Pursuant to California Labor Code Section 226(h), Plaintiff and the Class are  
17 entitled to bring an action for injunctive relief to ensure Defendants' compliance with California  
18 Labor Code section 226(a). Injunctive relief is warranted because Defendants continue to provide  
19 currently employed members of the Class with inaccurate wage statements in violation of  
20 California Labor Code section 226(a) and currently employed members of the Class have no  
21 adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants'  
22 ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'  
23 compliance with California Labor Code section 226(a).

24 70. Pursuant to California Labor Code sections 226(e) and 226(h), Plaintiffs and the  
25 Class are entitled to recover the full amount of penalties due under Section 226(e), reasonable  
26 attorneys' fees, and costs of suit.

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **(Waiting Time Penalties)**

3 71. Plaintiff incorporates by reference the preceding paragraphs.

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

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

12 74. Labor Code sections 203(a) provides, in relevant part, that “[i]f an employer  
13 willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3,  
14 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who  
15 quits, the wages of the employee shall continue as a penalty from the due date thereof at the same  
16 rate until paid or until an action therefor is commenced; but the wages shall not continue for more  
17 than 30 days.”

18 75. During the Class Period, Defendants failed to timely pay Plaintiff and the Waiting  
19 Time Penalty Sub-Class for all wages that were due and owing upon separation of employment as  
20 described herein.

21 76. Plaintiff and the Waiting Time Penalty Sub-Class are therefore entitled to recover  
22 waiting time penalties pursuant to Labor Code section 203.

23 **EIGHTH CAUSE OF ACTION**

24 **(Violation of Unfair Competition Law)**

25 77. The unlawful conduct of Defendants alleged herein constitutes unfair competition  
26 within the meaning of California Business and Professions Code Section 17200. This unfair  
27 conduct includes Defendants’ use of policies and practices which resulted in: failure to pay all  
28 hours worked; failure to authorize or permit, or provide, all required break periods or pay break

1 period premium wages; failure to provide accurate wage and hour statements; and failure to pay  
2 minimum and overtime wages. Due to their unfair and unlawful business practices in violation of  
3 the California Labor Code, Defendants have gained a competitive advantage over other  
4 comparable companies doing business in the State of California that comply with their obligations  
5 to authorize or permit rest and meal periods or pay rest break and meal period premium wages, to  
6 provide accurate wage and hour statements, and to pay minimum and overtime wages.

7 78. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
8 Class have suffered injury in fact and lost money or property, as described in more detail above.  
9 Pursuant to California Business and Professions Code Section 17203, Plaintiff and the Class are  
10 entitled to restitution of all wages and other monies rightfully belonging to them that Defendants  
11 failed to pay and wrongfully retained by means of their unlawful and unfair business practices.  
12 Plaintiff also seeks an injunction against Defendants on behalf of the Class enjoining Defendant  
13 from engaging in each of the unlawful practices, policies and patterns set forth herein.

#### 14 **NINTH CAUSE OF ACTION**

##### 15 **(Violation of the Private Attorneys General Act)**

16 79. Plaintiff incorporates by reference the preceding paragraphs.

17 80. California's Private Attorneys General Act ("PAGA") (Labor Code § 2698 et seq.)  
18 provides that any provision of the Labor Code that provides for a civil penalty to be assessed and  
19 collected by the Labor and Workforce Development Agency or any of its departments, divisions,  
20 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,  
21 be recovered through a civil action brought by an aggrieved employee on behalf of himself or  
22 herself and other current or former employees pursuant to the procedures specified in Section  
23 2699.3. (Labor Code § 2699(a).)

24 81. An aggrieved employee means any person who was employed by the alleged  
25 violator and against whom one or more of the alleged violations was committed. (Labor Code §  
26 2699(a).)

27 82. Plaintiff was an aggrieved employee against whom the Labor Code violations  
28 described herein were committed.

83. Plaintiff gave timely written notice to Defendant of the violations of various provisions of the California Labor Code as alleged in this First Amended Complaint (except for the theory of liability based on Defendant's unlawful uniform policy) and filed notice of the violations online with the Labor and Workforce Development Agency ("LWDA") on April 14, 2020. The LWDA did not provide notice of its intention to investigate Defendant's violations after expiration of the 65-day waiting time period, or at any time. Defendant also failed to cure within the time allotted by the PAGA statutes and 2810.3.

84. On September 15, 2020, Plaintiff gave timely written notice to Defendant of additional violations (based on its Defendant's unlawful policy requiring employees to don and doff their uniforms and protective gear off the clock) and filed notice of the violations online with the Labor and Workforce Development Agency ("LWDA"). Plaintiff has complied with all notice and exhaustion procedures as required by the PAGA statutes, and as required by Labor Code § 2810.3.

85. Plaintiff hereby seeks PAGA penalties on behalf of Plaintiff and all Aggrieved Employees during the PAGA period (one year + 65 days from the filing of the original complaint to present) for the Labor Code and Wage Order violations discussed herein (except for violations based on Defendant's unlawful uniform changing policy for which Plaintiff will seek leave to amend after the notice period has expired), including Labor Code sections 201, 202, 203, 204, 210, 216, 221, 222, 223, 225.5, 226, 226.3, 226.7, 226.8, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2810.5 and all applicable Wage Orders as well as interpretations of these laws by California courts and administrative bodies.

## PRAYER

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

1. For compensatory and liquidated damages according to proof;
2. For an order that Defendant make restitution of all amounts wrongfully withheld from Plaintiff and the class;
3. For civil penalties;

4. For pre-judgment interest as permitted by law;
5. For reasonable attorney's fees and costs of suit; and
6. For such other and further relief as the Court deems just and proper.

Dated: November 13, 2020

CROSNER LEGAL, P.C.



Michael Crosner  
Zachary Crosner  
Blake Jones  
Brittany Armstrong  
Attorneys for Plaintiff IRVIN MURILLO

**DEMAND FOR JURY TRIAL**

Plaintiff IRVIN MURILLO demands a trial by jury on all claims so triable.

Dated: November 13, 2020

CROSNER LEGAL, P.C.



Michael Crosner

Zachary Crosner

Blake Jones

Brittany Armstrong

Attorneys for Plaintiff IRVIN MURILLO

PROOF OF SERVICE  
*IRVIN MURILLO VS. SKY CHEFS, INC.*

*Los Angeles Superior Court Case No. 20STCV22905, Lead case# 19STCV44265*

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 433 N. Camden Dr., Ste. 400, Beverly Hills, CA 90210.

On November 13, 2020, I served true copies of the following document(s) described as

**FIRST AMENDED CLASS ACTION COMPLAINT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier

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PROOF OF SERVICE

to receive documents.

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

Executed on November 13, 2020, at Los Angeles, California.

  
\_\_\_\_\_  
Maria Monterrey

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PROOF OF SERVICE

SERVICE LIST

IRVIN MURILLO VS. SKY CHEFS, INC.

Los Angeles Superior Court Case No. 20STCV22905, Lead case# 19STCV44265

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