

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
alvin@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

Attorneys for Plaintiff Arutyun H. Adzhemyan, on
behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ARUTYUN H. ADZHEMYAN, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

SECURITAS SECURITY SERVICES USA,
INC., a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 20STCV20052

CLASS ACTION

Assigned for All Purposes To:

Hon. Elihu M. Berle
Dept. 6, Spring Street Courthouse

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

Original Complaint Filed: May 26, 2020

1 Plaintiff ARUTYUN H. ADZHEMYAN (hereinafter “Plaintiff”), on behalf of himself and
2 all other similarly situated non-exempt, hourly non-exempt security services employees employed
3 by Defendants in California (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff bring this action on behalf of himself and all other similarly situated
7 current and former Employees within the State of California who, at any time from four (4) years
8 prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees,
9 including as security services personnel, security officers, security guards, traffic controllers and
10 those in similar and related positions employed in California by Defendants SECURITAS
11 SECURITY SERVICES USA, INC., a Delaware corporation; and DOES 1 through 50, inclusive
12 (all defendants being collectively referred to as “Defendants”). Plaintiff alleges that Defendants,
13 and each of them, violated various provisions of the California Labor Code, relevant orders of the
14 Industrial Welfare Commission (“IWC”), and the California Business & Professions Code, and
15 seeks redress for these violations.

16 2. Plaintiff was assigned to work by Defendants during the relevant time period based
17 out of Defendant’s facilities in Los Angeles County. Plaintiff was employed for over 20 years and
18 during the relevant period by Defendants as a security officer and guard and traffic controller
19 assigned to television studios in Los Angeles County. Plaintiff worked as a security services
20 employee along with other non-exempt hourly employees in similar and related positions and
21 assigned by Defendants to work at various assigned locations for Defendants’ clients throughout,
22 Los Angeles County and California.

23 3. Plaintiff and the other similarly situated Employees of Defendants worked at
24 assigned postings and based out of Defendants’ facilities and offices in California at Defendants’
25 behest without being paid all wages due and without being provided all their required meal periods
26 and rest breaks. Upon information and belief, Plaintiff was employed by Defendants and (1)
27 shared similar job duties and responsibilities; (2) was subjected to the same policies and practices;
28 and (3) endured similar violations at the hands of Defendants as the other Employee Class

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

10 4. Defendant Securitas SECURITY SERVICES USA, INC. is a Delaware corporation
11 with principal executive offices in Parsippany, New Jersey. It does not list a principal business
12 office in California with the Secretary of State, and describes its business as "Security Services." It
13 is listed as the employer on wage statements issues to Plaintiff, and upon information and belief
14 the other Class Members employed by DEFENDANT SECURITAS SECURITY SERVICES
15 USA, INC. in California, with an office address in Burbank, California. Defendant SECURITAS
16 SECURITY SERVICES USA, INC. describes itself as the leader in the protective services and
17 security industry, and provides security solutions to its various clients, including on-site guarding
18 services, and operates numerous offices in Los Angeles County and throughout California.

19 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
25 County, as Plaintiff was assigned to work in Los Angeles County with other Class members.
26 However, Defendants also operate facilities and offices and employ and place similarly situated
27 Class members in postings throughout California.

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6. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff are informed and believe and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

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

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock work and through unlawful rounding and failing to pay overtime and double time, failed to provide meal and rest breaks, and failed to furnish accurate

1 wage statements and timely pay all wages owed, all in violation of various provisions of the
2 California Labor Code and applicable paragraphs of the IWC Wage Orders.

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

9 10. Plaintiff was employed for over 20 years and during the relevant period by
10 Defendants as a security guard and traffic controller assigned to television studios in Los Angeles
11 County. Plaintiff and the other security services employees in the Class worked long hours, and
12 Plaintiff generally worked at least five days per week for shifts of twelve hours or longer in
13 duration. Plaintiff was generally scheduled to work shifts from 7:00 a.m. to 7:00 p.m. To start on
14 time, he would have to arrive at the studio parking area and park and walk to the guard building
15 and signed in by 7:00 a.m., all time which was uncompensated.

16 11. Plaintiff would then report to the security offices where his shift start time would
17 be recorded on a payroll sheet or daily log sheet by his supervisor. Defendants utilized
18 timekeeping systems and procedures which resulted in inaccurate or incomplete records of clock
19 in and out times for work shifts and meal periods, including by rounding hours down to the
20 detriment of the Employees in the Class. Plaintiff and the Class members did not input their own
21 punch times for their daily hours worked or times for meal periods. There was no manual input
22 mechanism for timekeeping entries, nor were there any scanners or electronic systems that
23 enabled Defendants to record the actual time worked by Plaintiff and the Class members to the
24 minute. Instead, dramatic rounding took place, as supervisors would not record times accurately,
25 including at the beginnings of work shifts for all time under Defendants' control, such that time
26 entries generally were inputted by supervisors to confirm to daily schedule work shift hours. On
27 the occasions when Plaintiff and the Class members were permitted to record their own work
28 times on these log sheets, supervisors also required them to record rounded times to their

1 detriment that conformed to scheduled shift times rather than the actual hours they worked.

2 12. In the process of reporting in for his work shift, Plaintiff would receive his radio
3 and a briefing sheet with important daily items listed, and then would walk to his assigned post
4 for the day. Plaintiff most often was assigned to work one of the studio gates and to provide
5 traffic control at those gates. He would work though a long shift without receiving all the breaks
6 he required, and would then return to the security offices at the end of his shift, where he would
7 turn in his radio and a supervisor would write in on the time/payroll sheet the shift end time.
8 These timekeeping entries again were not a reflection of the actual hours Plaintiff worked, and
9 instead were rounded to the detriment of Plaintiff and the Class members by Defendants'
10 supervisors to generally conform to the scheduled shift times rather than actual times. On the
11 occasions when Plaintiff and the Class members were permitted to record their own work times
12 on these log sheets, supervisors again required them to record rounded times to their detriment
13 that conformed to scheduled shift times rather than the actual hours they worked.

14 13. Defendants also failed to maintain accurate times for any meal periods that were
15 provided to Plaintiff and the Class members, as times were written in on log sheets by security
16 officers designated to cover for other security guards while they are on break. Due to the unlawful
17 rounding and failure record all his work hours accurately, and the other off the clock work before
18 and after his work shifts, Plaintiff endured substantial unpaid time that took him well-past twelve
19 hours worked on his applicable shifts, which Defendants failed to pay at the overtime or double
20 time rates required under the California Labor Code. Upon information and belief, the other Class
21 members endured similar violations at Defendants' hands.

22 14. Plaintiff and the Class members were not authorized to review their daily or
23 weekly timekeeping entries, or to otherwise edit the log books to conform to actual times worked,
24 and Defendants would compile them as necessary to create electronic records to send to payroll to
25 create wage statements therefrom without permitting Employee review or editing, or even
26 questioning. Defendants' violations were exacerbated by the inability of Employees to review and
27 make required revisions to their timekeeping entries before Defendants finalized payroll data for
28 the pay periods. As a result of the many inaccurate and unlawfully rounded entries by managers,

Defendants systematically and uniformly failed to pay Plaintiff and the Class members wages as required for all their hours worked and unlawfully deducted wages they earned.

15. The above common policies and practices and violations led to systematic off the clock work where Employees were working or otherwise under Defendants' control before shift start times, and after shift end times, but they were not compensated by Defendant for all their time, including due to unlawful rounding. There were many issues with the timekeeping system, as Plaintiff noted that his timekeeping entries would not correctly recorded or Defendants' managers would later edit them as necessary to reflect scheduled times. This unpaid off the clock work, including that incurred before shift start times, also impacted when employees should have been paid at the applicable hourly overtime and double time rates, as they began incurring overtime and double time later than they should have during a work shift. This led to systematic underpayment of regular and overtime and double time wages.

16. Given the above described off the clock work and unlawful rounding and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often notice on his wage statements that he was being paid for substantially fewer hours than he actually worked, and that he was not paid at the correct overtime or double time rates for all hours he worked after eight or twelve hours into a shift or over forty in a work week. Plaintiff was not provided the opportunity to see that any changes had been made to timekeeping records and payroll data before pay checks were issued, despite being repeatedly underpaid for all his hours worked. Defendants' conduct is also in violation of the requirement to timely pay all wages, including under Labor Code § 204, and to pay them weekly as applicable under Labor Code § 201.3. Upon information and belief, the same occurred in connection with the other Class members.

17. Defendants also relied heavily on calling Plaintiff and the Class members regarding daily scheduling issues and regarding other work related matters, and did so without regard to whether they were off duty. This resulted in further off the clock work where Plaintiff and the Class members were under Defendant's control and performing work duties without compensation. This time was not compensated as hours worked by Defendants, and Defendants

1 failed to reimburse Plaintiff and the Class members for the substantial use of their personal
2 phones and data plans for work-related purposes.

3 18. Plaintiff was therefore not paid for all his hours worked at the required minimum,
4 overtime and double time wage rates due to Defendants' policy of unlawful rounding and practice
5 of requiring him to work off the clock and without pay, and failed to pay at the required overtime
6 and double time rates for all hours over eight or twelve in a shift, or over forty in a week. With
7 work shifts generally being scheduled for twelve hours or more, this unpaid off the clock work
8 resulted in Plaintiff and the Class members working past eight hours and twelve hours on a shift,
9 which required that they be paid at the correct overtime rate of 1.5 times their regular rate and
10 double time rate of twice the regular rate. Defendants' management would shave hours worked
11 off of Plaintiff's daily and weekly totals, or otherwise round them down or fail to record them. To
12 the extent Defendants paid Class members any shift differentials or other forms of remuneration,
13 Defendants failed to include them in the regular rate used to calculate and pay overtime and
14 double time hours.

15 19. Defendants thus systematically underpaid Plaintiff and the Class members by
16 failing to pay them at the required overtime and double time rates for all hours over eight in a
17 work shift or over forty in a work week, and all hours over twelve in a day at the required double
18 time rate. Upon information and belief, the Class members were bound by similar scheduling and
19 work policies which Defendants required them to follow, and endured similar violations for
20 unpaid wages at Defendants' hands as Plaintiff.

21 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
22 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
23 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
24 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, and by
25 deducting time for meal periods that were not lawfully provided, and by recording incorrect
26 timekeeping entries for meal period times and shift hours worked, Defendants have committed
27 knowing and intentional ongoing violations of the record keeping requirements under the Labor
28 Code, including section 1174.

1 21. The failure to pay for all hours worked and underpayment of wages to Plaintiff
2 and the Class members is and has been a direct consequence of Defendants' unlawful
3 compensation policies and practices, which applied uniformly to the Class members working at
4 Defendants' assigned locations throughout California. As a result of the above described unlawful
5 requirements to work off the clock, the failure to accurately record all hours worked and pay
6 wages at the correct rates, and the other wage violations they endured at Defendants' hands,
7 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
8 them by Defendants, including when working more than eight hours or twelve hours in any given
9 day and/or more than forty hours in any given week. As a result of Defendants' unlawful policies
10 and practices, Plaintiff and Class members incurred overtime hours worked for which they were
11 not adequately and completely compensated, in addition to the hours they were required to work
12 off the clock at their regular rates.

13 22. Therefore, from at least four years prior to the filing of this lawsuit and continuing
14 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
15 hours worked, and failing to pay minimum wages for all time worked, as required by California
16 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
17 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
18 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
19 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
20 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

21 23. Defendants also failed to provide Plaintiff and the Class members with their
22 required first and second meal periods, and their first, second, and third required rest breaks. The
23 above described off the clock work contributed to Defendants' common policy of failing to
24 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
25 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
26 authorize and permit Plaintiff and the Class members to take all required 10-minute rest breaks,
27 as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

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1 24. Plaintiff was scheduled to take two meal periods on his shifts, although he often
2 only received one and it was untimely and/or interrupted by work duties. Defendants maintained
3 a strict policy requiring employees in the Class to remain on Defendants' premises during meal
4 periods, which compelled Plaintiff to eat a meal sitting in his car or on the studio grounds rather
5 than ever leaving and returning. Defendants also required Plaintiff and the Class members to keep
6 radios with them at all times so they could communicate about job related situations and
7 requirements, and Defendants managers and supervisors communicated regularly with Plaintiff
8 and other employees about work requirements and job duties without regard to whether they were
9 on what was supposed to be a duty free break. Defendants thus exerted control over Plaintiff and
10 the Class members by requiring them to remain on the premises and monitor and receive radio
11 communications during meal periods.

12 25. Additionally, given the demands of his job duties and work requirements he was
13 expected to complete and comply with, Plaintiff was often not relieved to take his first meal
14 period until well after five hours into his work shift. Plaintiff was generally scheduled to take a
15 meal period a few hours into his shift and then a second one later in the afternoon, but again, was
16 often only provided one meal period and did not receive the second. When he did receive a meal
17 period, it was interrupted or shortened or untimely and Plaintiff was unable to leave the premises.

18 26. In order to be permitted to take a meal period, Plaintiff would have to call his
19 supervisor on the radio to request relief by a security officer release person, also referred to as a
20 breaker officer or guard. Defendants required the breakers to maintain log sheets listing the times
21 when they relieved another co-worker in the Class, but Defendants were more concerned that
22 those sheets reflected scheduled times than ensuring they reflected the actual times breaks were
23 taken and their duration. Defendants otherwise maintained no records of when Plaintiff and the
24 Class members took meal breaks and for how long, as required under the Labor Code.

25 27. Even though a meal periods was ostensibly scheduled in the late morning for
26 Plaintiff, if and when he did was able to take a meal period it was only after relief guards were
27 late, and meal periods were often untimely as a result. Class members also endured similar
28 violations when serving as relief guards, in that they were too busy attempting to provide breaks

1 for other guards that Defendants did not authorize them to take their own. To whatever extent
2 Defendants maintain that Plaintiff and the Class members were compensated for any portion of
3 their time during meal periods, this still does not relieve Defendants of the responsibility to
4 ensure that meal periods are provided to Employees, and that they are timely, uninterrupted, and
5 duty-free. To the extent Plaintiff and the Class members were required to remain under
6 Defendants' control during meal periods or to otherwise remain on-duty, this resulted in further
7 off the clock work and Defendants' failure to pay Employees for all compensable time they
8 worked.

9 28. Plaintiff and the Class members generally worked shifts that entitled them to
10 receive at least one meal period and two to three rest breaks. However, Defendants failed to
11 provide all required meal periods and rest breaks to Plaintiff and the Class members. Defendants
12 followed uniformly applied policies of not providing all required meal periods and rest breaks to
13 their Employees in accordance with the Labor Code and IWC Wage Orders. Meal periods were
14 often not provided during a work shift, as work and production demands and management
15 pressure required Employees to work through breaks. When breaks were provided, they were
16 frequently provided well after five hours into a work shift, and often for less than 30 minutes, and
17 Plaintiff and the Class members were required to monitor their radios and remain under
18 Defendants' control during breaks. Plaintiff was also required to endure shifts of ten hours or
19 more without receiving a second meal period or all his required rest breaks, as were the other
20 Class members.

21 29. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 members, as required by the applicable Wage Order and Labor Code. Defendants did not have a
24 policy or practice which provided or recorded all the legally required unpaid, off-duty meal
25 periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Class
26 members. Plaintiff and other Class members were required to perform work as ordered by
27 Defendants or otherwise remain under Defendants' control for more than five hours during a
28 shift, or ten hours in a shift, but were often required to do so without receiving a lawful, timely,

1 and duty-free 30-minute meal break for every five hours worked. Additionally, as addressed
2 above, Defendants followed a practice of requiring off the clock work, in a manner that would
3 impact when Employees were to receive meal periods and rest breaks, thus leading to further
4 violations.

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

13 31. Therefore, for at least four years prior to the filing of this action and through to the
14 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
15 provided with the opportunity to take required meal breaks due to Defendants' policies and
16 practices. On the occasions when Plaintiff and the Class members were provided with a meal
17 period, it was often provided after five hours into a work shift and was therefore untimely or was
18 interrupted, or was impermissibly shortened, and Employees were not provided with one hour's
19 wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they
20 failed to do so for all violations. Meal period violations thus occurred in one or more of the
21 following manners:

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

- 1 (c) Class members were required to work through at least part of their daily
2 meal period(s);
- 3 (d) Meal periods were provided after five hours of continuous work during a
4 shift; and
- 5 (e) Class members were restricted in their ability to take a full thirty-minute
6 meal period or were otherwise required to remain under Defendants'
7 control during meal periods.

8 32. Defendants also failed to authorize and permit Plaintiff and the Class members to
9 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
10 thereof. Rest breaks were not scheduled, as Defendants' policy was not to provide them unless
11 and Employee asked to take one, and management did not emphasize the requirement to provide
12 at least one ten minute duty-free rest period for each four hour duty period, or major fraction
13 thereof. Plaintiff was rarely authorized or able to take an uninterrupted, duty-free rest break
14 during his work shifts. Defendants followed an unlawful policy and practice of requiring Plaintiff
15 and the other Class members to request permission to take a rest break, and then failing to
16 provide compliant rest breaks when the break requests were granted.

17 33. Defendants' communicated and uniformly applied policy was that rest breaks
18 could be taken whenever Employees wanted to take them, but only if they called a supervisor on
19 the radio and requested a breaker to relieve them. Plaintiff and the Class members would then
20 have to wait at their posting for the relief guard to come, which in many instances would take
21 hours or not come at all, and then were allowed to take a break only after signing the post over to
22 the relief guard. Plaintiff and the Class members were then placed on "stand-by" status, and
23 required to remain on call to return to their post at a moment's notice. Class members also
24 endured similar violations when serving as relief guards, in that they were too busy attempting to
25 provide breaks for other guards that Defendants did not authorize them to take their own.

26 34. When combined with the continued requirement to carry radios with them and
27 respond to and monitor communications from Defendants, and to remain in stand-by status ready
28 to respond to work demands during breaks, Plaintiff and the class members were required to work

1 through and remain under Defendants' control during their rest periods. As Plaintiff found it
2 difficult to receive even a first rest break that was compliant, it was even less likely that he would
3 ever receive a second or a third rest break on extended work shifts regularly spanning twelve
4 hours. Additionally, any breaks Plaintiff did receive were generally either untimely or shortened
5 or interrupted by work demands, and Plaintiff and the Class members were also unable to leave
6 Defendants' premises during rest breaks and were required to remain on-call or otherwise in
7 stand-by status during breaks to respond to calls from Defendants' supervisors. The difficult and
8 timely process of requesting relief, waiting for it to arrive, and then being permitted to leave only
9 when it arrived also made it difficult for Plaintiff and the Class members to take bathroom breaks
10 when they were reasonably required, and this often caused Plaintiff and the Class members great
11 discomfort and inconvenience..

12 35. Therefore, the job requirements and duties required of Plaintiff and the Class
13 members, and the demands from management and customers, manifested a failure to authorize
14 and permit Class members to take all their required rest breaks. Plaintiff and the other similarly
15 situated Class members were either not authorized permitted the opportunity to take a rest break,
16 or were required to remain under Defendants' control and respond to instructions from
17 management and job and customer demands. Defendants also failed to authorize and permit
18 employees to leave the premises during rest breaks, or else prevented them from doing so, thus
19 further evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
20 to remain under their control during required off-duty rest breaks.

21 36. Defendants' policies and practices thus systematically deny and denied Plaintiff
22 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
23 periods. The California Supreme Court has instructed that the rest period requirement obligates
24 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
25 periods employers must relieve employees of all duties and relinquish control over how
26 employees spend their time. Plaintiff and the Class members were and are under Defendants'
27 control when they are working through rest breaks, and Defendants failed to schedule or account
28 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members

1 generally worked.

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

- 9 (a) Class members were required to work without being provided a minimum
10 ten minute rest period for every four hours or major fraction thereof
11 worked and were not compensated one hour of pay at their regular rate of
12 compensation for each workday that a rest period was not provided;
- 13 (b) Class members were not authorized and permitted to take timely rest
14 periods for every four hours worked, or major fraction thereof; and
- 15 (c) Class members were required to remain on-duty and under Defendants'
16 control during rest periods or otherwise had their rest periods interrupted
17 by work demands.

18 38. From at least four years prior to the filing of this lawsuit and continuing to the
19 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
20 deducting the Employees' earned wages, including by the above described off the clock before
21 and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods
22 Defendants failed to provide. In such instances, Plaintiff and the Class members had their wages
23 unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping
24 records than were in fact worked. By not compensating Employees for all hours worked and
25 failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages
26 earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

27 39. As a result of the above described illegal policies and practices, Defendants
28 engaged in and enforced the following additional unlawful practices and policies against Plaintiff

1 and the Class members he seeks to represent:

- 2 a. failing to pay all wages owed to Class members who either were discharged, laid
3 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
4 203;
- 5 b. failing to pay all wages owed to the Class members twice monthly in accordance
6 with the requirements of Labor Code § 204 and to pay them weekly as applicable
7 under Labor Code § 201.3;
- 8 c. failing to pay Class members all wages owed, including all meal and rest period
9 premium wages;
- 10 d. failing to maintain accurate records of Class members' earned wages and meal
11 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
12 applicable IWC Wage Orders; and
- 13 e. failing to produce timekeeping records in response to Plaintiff' timely and lawful
14 request to receive them under these authorities.

15 40. From at least four (4) years prior to the filing of this lawsuit, and continuing to the
16 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
17 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
18 the above-described requirement of off the clock work, failure to pay all overtime and double
19 time, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest
20 breaks. Defendants have also made it difficult to account with precision for the unlawfully
21 withheld wages and meal and rest period compensation owed to Plaintiff and the Class, during the
22 liability period, because they did not implement and preserve a record-keeping method as required
23 for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the
24 applicable California Wage Orders. Upon information and belief, time clock punches were not
25 maintained or were not accurately maintained for work shifts and meal periods, which were
26 automatically presumed by Defendants to have been lawfully provided when they were not.
27 Defendants also failed to accurately record and pay for all regular and overtime and double time
28 hours worked by Plaintiff and the Class members.

1 41. Defendants also provided Plaintiff and the Class members with wage statements
2 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
3 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
4 the actual hours they worked in total during a pay period.

5 42. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
6 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
7 and the Class members, along with the appropriate applicable rates, among others requirements.
8 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
9 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
10 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
11 when the employee begins and ends each work period, meal periods, wages earned pursuant to
12 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
13 from payment of wages and accurately reporting total hours worked by the Class members.

14 43. Defendants also required Plaintiff and the Class members to work hours off the
15 clock for which they were not compensated, including during interrupted or otherwise on-duty
16 meal and rest periods. Defendants also failed to pay all overtime and double time premium wages
17 owed for work conducted on a work shift and a workday, as addressed above. Therefore, when
18 they received wage statements and pay checks, they did not compensate all hours worked on a
19 timely basis, resulting in Defendants' systematic failure to pay all wages owed to Plaintiff and the
20 Class members twice monthly in accordance with the requirements of Labor Code § 204, and to
21 pay them weekly as applicable under Labor Code § 201.3.

22 44. Also, from at least three years prior to filing this lawsuit and continuing to the
23 present, Defendants have also followed a uniform and consistent policy of failing to pay all wages
24 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
25 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.
26 Defendants' failure to pay wages for all hours worked and failure to pay premiums for overtime
27 and double time and unlawful meal and rest periods further evidenced their failure to pay all
28 wages owed to Plaintiff and the Class members at the time they were terminated or otherwise

1 separated from employment.

2 45. Defendants also failed to maintain facilities or take procedures to relieve Plaintiff
3 and the Class members from the high temperatures they were required to endure during hot
4 weather. While there were guard sheds or shacks at many of the outdoor postings, Plaintiff and
5 the impacted Class members were unable to sit in them unless for brief periods given their traffic
6 control and other duties that had to be performed outside of any cover or shelter. By failing to
7 maintain temperatures providing reasonable comfort levels consistent with industry-wide
8 standards for the nature and process of the work performed, Defendants violated paragraph 15 of
9 the applicable IWC Wage Orders, and are entitled to civil penalties as appropriate.

10 46. Additionally, from at least four years prior to the filing of this lawsuit and
11 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
12 incur necessary business expenses in the course of performing their required job duties without
13 reimbursement. Defendants required Plaintiff and the Class members to use their cellular phones
14 to conduct work related business and to receive scheduling and location assignments. Plaintiff was
15 required to respond to calls and messages from Defendants on his personal cellular phone during
16 his off-duty time. Plaintiff would receive many calls from Defendants' management and
17 supervisors, often in the middle of the night or early morning, regarding work matters or shift
18 scheduling or asking him to cover other shifts. Plaintiff estimates that 35% of his cellular phone
19 bill expenses each month were dedicated to work related calls and messages and processing and
20 responding to them. Defendants failed to reimburse for any such work-related expenses Plaintiff
21 and the Class members were required to incur.

22 47. Additionally, Defendants provided a uniform allowance to cover the purchase price
23 and cleaning and maintenance costs of required company uniforms that Plaintiff and the Class
24 members were required to wear, but it was insufficient to cover all necessarily incurred expenses.
25 Plaintiff, and upon information and belief the other class members, were provided only two
26 uniforms by Defendants, which were not enough when they had to be cleaned and rotated to wear
27 while working repeated twelve hour shifts in demanding conditions. Plaintiff therefore had to
28 purchase additional uniforms and uniform related items for which he was not compensated. When

combined with the significant costs in cleaning and maintaining the uniforms he purchased and was issued, Plaintiff also spent dramatically more each month than his allowance covered. Defendants failed to reimburse Plaintiff and the Class members for any of their expenses related to their personal cellular phones and data usage, or for the uniforms they had to purchase and maintain to work under demanding conditions, in violation of Labor Code § 2802.

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

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

CLASS ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

21 j. Subclass 10. Failure to Maintain Reasonable Temperature Subclass: All Class
22 members who, within the applicable limitations period, were required by Defendants to work in
23 areas with temperatures that were not maintained to provide reasonable comfort consistent with
24 applicable standards.

25 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
26 result of Defendants' business acts and practices, to the extent such acts and practices are found to
27 be unlawful, deceptive, and/or unfair.

28

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

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

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

19 **A. Numerosity**

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

26 **B. Commonality**

27 55. There are questions of law and fact common to the Class that predominate over any
28 questions affecting only individual Class members. The common questions are numerous and

substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

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

- 1 m. Whether Defendants violated Labor Code § 1198 and paragraph 15 of the
2 applicable IWC Wage Orders by failing to maintain work area temperatures at a
3 reasonable comfort level consistent with industry standards;
- 4 n. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary
5 business expenses incurred by Employees;
- 6 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
7 p. Whether Employees are entitled to equitable relief pursuant to Business and
8 Professions Code § 17200 *et seq.*

9 **C. Typicality**

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

16 **D. Adequacy of Representation**

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

20 **E. Superiority of Class Action**

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

26 59. As to the issues raised in this case, a class action is superior to all other methods for
27 the fair and efficient adjudication of this controversy, as joinder of all Class members is
28 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class

1 members. Further, as the economic or other loss suffered by vast numbers of Class members may
2 be relatively small, the expense and burden of individual actions makes it difficult for the Class
3 members to individually redress the wrongs they have suffered. Moreover, in the event
4 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
5 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
6 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
7 to vindicate their rights for violations they endured which they would otherwise be foreclosed
8 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

24 62. Plaintiff and the Employees in the Class did not discover the fact that they were
25 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
26 any discussion about Plaintiff' and the Class' wavier of their Constitutional rights of trial by jury,
27 to collectively organize and oppose unlawful pay practices under California law as well as obtain
28 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of

1 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(Against All Defendants)**

5 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

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

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

1 66. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
2 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
3 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

4 67. The applicable minimum wage rate fixed by the commission for work during the
5 relevant period is found in the Wage Orders.

6 68. The minimum wage provisions of California Labor Code are enforceable by private
7 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
8 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
9 overtime compensation applicable to the employee is entitled to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage or overtime compensation, including
11 interest thereon, reasonable attorney’s fees and costs of suit.”

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

21 70. In committing the above described violations of the California Labor Code,
22 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
23 did not reflect their actual hours worked, or calculated the correct time worked and consequently
24 underpaid the actual time worked by Plaintiff and other members of the Class, including by
25 requiring off the clock work and rounding, as addressed in detail above. Defendants acted in an
26 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
27 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
28

1 and regulations. As a result of these violations, Defendants also failed to timely pay all wages
2 earned in accordance with California Labor Code § 1194.

3 71. California Labor Code § 1194.2 also provides for the following remedies: “In any
4 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
5 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
6 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

7 72. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
8 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
9 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
10 pay each employee minimum wages.

11 73. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
12 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
13 interest thereon.

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

17 75. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
18 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
19 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
20 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
21 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
22 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
23 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
24 extent minimum wage compensation is determined to be owed to the Class members who have
25 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
26 and therefore these individuals are also be entitled to waiting time penalties under California
27 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
28 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay

1 all wages owed twice monthly or to pay them weekly as applicable under Labor Code § 201.3, and
2 resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate
3 wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good
4 faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

5 **SECOND CAUSE OF ACTION**

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

7 **(Against All Defendants)**

8 76. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

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

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

1 their regular rate and the correct double time rate of twice the regular rate.

2 79. Defendants thus had a consistent policy of not paying Employees wages for all
3 hours worked, including hours at their required regular, overtime, and double-time rates, and as
4 required under applicable living wage ordinances. Defendants required Plaintiff and the Class
5 members to work off the clock to avoid paying all their earned and owed straight time and
6 overtime wages and other benefits, in violation of the California Labor Code, the California Code
7 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
8 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
9 and other similarly situated non-exempt employees to work through meal periods when they were
10 required to be clocked out or to otherwise work off the clock to complete their daily job duties or
11 and participate in company required activities or remain under Defendants' control. Therefore,
12 Employees were not properly compensated, nor were they paid overtime rates for hours worked in
13 excess of eight hours in a given day, and/or forty hours in a given week, or at double time rate for
14 hours over twelve in a shift. Based on information and belief, Defendants did not make available
15 to Employees a reasonable protocol for correcting time records when Employees worked overtime
16 or double time hours or to fix incorrect time entries or those that Defendants unlawfully under-
17 recorded to the Employee's detriment. Defendants also under-paid Plaintiff and the putative Class
18 members all wages by systematically miscalculating and underpaying overtime wages they earned.

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

23 81. Additionally, Labor Code § 558(a) provides "any employer or other person acting
24 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
26 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid in addition to an amount sufficient to recover
28 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
3 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
4 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
5 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
6 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
7 Code § 558.

8 82. Defendants’ failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid
10 semimonthly. From four years prior to the filing of this lawsuit to the present, in direct violation
11 of that provision of the California Labor Code, Defendants have failed to pay all wages and
12 overtime compensation earned by Employees. Each such failure to make a timely payment of
13 compensation to Employees constitutes a separate violation of California Labor Code § 204.

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

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

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 86. Employees regularly worked shifts greater than five hours and in most instances,
7 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
8 Wage Order, an employer may not employ someone for a shift of more than five hours without
9 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
10 ten hours without providing him or her with a second meal period of not less than thirty (30)
11 minutes.

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

20 88. Defendants thus failed to provide Plaintiff and the Class members with meal
21 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
22 including by not providing them with the opportunity to take meal breaks, by providing them late
23 or for less than thirty minutes, or by requiring them to perform work during breaks or otherwise
24 remain under Defendants' control during them, including through radio communications and
25 refusing to permit them to leave Defendants' premises during breaks.

26 89. Moreover, Defendants failed to compensate Employees for each meal period not
27 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
28 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an

1 employee a meal period in accordance with this section, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
3 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
4 period not provided or inadequately provided, as required under Labor Code § 226.7 and
5 paragraphs 11 and 20 of the applicable IWC Wage Order.

6 90. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
7 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
8 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
9 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
10 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
11 other statutes and applicable IWC Wage Order paragraphs.

12 **FOURTH CAUSE OF ACTION**

13 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

14 **(Against All Defendants)**

15 91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 92. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
18 provide that employers must authorize and permit all employees to take rest periods at the rate of
19 ten (10) minutes net rest time per four (4) work hours.

20 93. Employees consistently worked consecutive four (4) hour shifts and were generally
21 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
22 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
23 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
24 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
25 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
26 required to work or to otherwise remain under Defendants' control during rest periods, and had
27 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
28 Class members were also not permitted to leave their work premises during rest breaks, and were

1 further subjected to Defendants' control during rest breaks when they were required to remain on
2 stand-by status and respond to radio communications.

3 94. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
4 Orders provide that if an employer fails to provide an employee rest period in accordance with this
5 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
6 compensation for each workday that the rest period is not provided.

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

10 96. Defendants failed to authorize and permit Plaintiff and the Class members to take
11 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
12 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
13 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
14 12 and 20 of the applicable IWC Wage Orders.

15 97. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
16 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
17 hour of wages at their effective hourly rates of pay for each day worked without the required rest
18 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
19 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

20 **FIFTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(Against All Defendants)**

23 98. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 99. California Labor Code § 226(a) requires an employer to furnish each of his or her
26 employees with an accurate, itemized statement in writing showing the gross and net earnings,
27 total hours worked, and the corresponding number of hours worked at each hourly rate; these
28 statements must be appended to the detachable part of the check, draft, voucher, or whatever else

1 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
2 statements may be given to the employee separately from the payment of wages; in either case the
3 employer must give the employee these statements twice a month or each time wages are paid.

4 100. Defendants failed to provide Plaintiff and the similarly situated Employee Class
5 members with accurate itemized wage statements in writing, as required by the Labor Code and
6 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
7 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
8 including by failing to pay for all hours worked, failure to pay for all overtime hours and double
9 time hours worked and for providing deficient meal periods and rest breaks, all of which
10 Defendants knew or reasonably should have known were owed to the Employees, as alleged
11 above.

12 101. Defendants also provided Plaintiff and the Class members with wage statements
13 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
14 Due to Defendants' failure to record and compensate for all hours worked or failure to do so
15 accurately, Plaintiff and the Employees in the Class were unable to discern from their wage
16 statements along the actual hours they worked in total during a pay period.

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

1 103. Plaintiff and the Class members suffered injury as a result of Defendants’ knowing
2 and intentional failure to provide them with the wage and hour statements as required by law and
3 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
4 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
5 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
6 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
7 wage statement alone one or more of the following: (i) The amount of the gross wages or net
8 wages paid to the employee during the pay period or any of the other information required to be
9 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
10 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
11 wages paid to the employee during the pay period, (iii) The name and address of the employer
12 and, (iv) The name of the employee and only the last four digits of his or her social security
13 number or an employee identification number other than a social security number. For purposes
14 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
15 objective standard] would be able to readily ascertain the information without reference to other
16 documents or information.

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

25 105. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
26 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
27 Class suffered injuries, including among other things confusion over whether they received all
28 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing

1 them to make mathematical computations to analyze whether the wages paid in fact compensated
2 them correctly for all hours worked.

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

10 **SIXTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 221**
12 **(Against All Defendants)**

13 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

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

20 109. Defendants unlawfully received and/or collected wages from the Employees in the
21 Class by implementing a policy understating the hours worked by Employees by requiring off the
22 clock work, as alleged above. In such instances, Plaintiff and the Class members had their wages
23 unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping
24 records than were in fact worked. By not compensating Employees for all hours worked and
25 failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages
26 earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

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

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

111. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

112. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. This included failing to pay all wages due and owing to Plaintiff and the Class members for all hours they worked and failing to pay all wages earned by not more than seven calendar days following the close of the payroll period.

113. Defendants also required Plaintiff and the Class members to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime and double time premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Class members received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants’ systematic failure to pay all wages owed to Plaintiff and the Class members twice monthly in accordance with the requirements of Labor Code § 204.

1 114. Given the above described off the clock work and unlawful rounding and
2 deductions from hours worked perpetrated by Defendants’ management, Plaintiff would often
3 notice on his wage statements that he was being paid for substantially fewer hours than he actually
4 worked, and that he was not paid at the correct overtime or double time rates for all hours worked.
5 Defendants’ uniformly applied payroll policies and practices thus resulted in further systematic
6 and ongoing violations of the requirements of Labor Code § 204.

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

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

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

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

118. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

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

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

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

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

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

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

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

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

11 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 126. Plaintiff and the Class are informed and believe and based thereon alleges that
14 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
15 necessary work related expenses they incurred. Plaintiff was required to respond to calls and
16 messages from Defendants on his personal cellular phone during his off-duty time regarding work
17 matters or shift scheduling or asking him to cover other shifts. Plaintiff estimates that 35% of his
18 cellular phone bill expenses each month were dedicated to work related calls and messages and
19 processing and responding to them.

20 127. Additionally, Defendants provided a uniform allowance to cover the purchase price
21 and cleaning and maintenance costs of required company uniforms that Plaintiff and the Class
22 members were required to wear, but it was inadequate to cover all the expenses. Plaintiff, and
23 upon information and belief the other class members, were provided only two uniforms by
24 Defendants, which were not enough when they had to be cleaned and rotated to wear while
25 working repeated twelve hour shifts in demanding conditions. Plaintiff therefore had to purchase
26 additional uniforms and uniform related items for which he was not compensated. When
27 combined with the significant costs in cleaning and maintaining the uniforms he purchased and
28 was issued, Plaintiff also spent dramatically more each month than his allowance covered.

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

5 129. Defendants' knowing and willful failure to reimburse lawful necessary work related
6 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
7 things, Defendants did not inform employees of their right to be reimbursed for those work related
8 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
9 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
10 necessary expenses was an expected and essential function of their employment with Defendants
11 and that failure to incur those expenses would have adverse consequences on their employment.

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

18 **TENTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN TEMPERATURES UNDER THE WAGE ORDERS**

20 **(Against All Defendants)**

21 131. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 132. Under Labor Code § 1198, "[t]he employment of any employee for longer hours
24 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
25 Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding
26 the temperatures maintained at employers facilities within California: "(A) The temperature
27 maintained in each work area shall provide reasonable comfort consistent with industry-wide
28 standards for the nature of the process and the work performed. (B) If excessive heat or humidity

1 is created by the work process, the employer shall take all feasible means to reduce such excessive
2 heat or humidity to a degree providing reasonable comfort...”

3 133. Under Labor Code §1199: “Every employer or other person acting either
4 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
5 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
6 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
7 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
8 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
9 an order of the commission...”

10 134. During the relevant time period, as detailed above, Defendants violated Labor Code
11 §§ 1198 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and
12 other aggrieved employees with reasonable comfort. Defendants failed to maintain facilities or
13 take procedures to relieve Plaintiff and the Class members from the high temperatures they were
14 required to endure during hot weather. While there were guard sheds or shacks at many of the
15 outdoor postings, Plaintiff and the impacted Class members were unable to sit in them unless for
16 brief periods given their traffic control and other duties that had to be performed outside of any
17 cover or shelter.

18 135. These practices and policies resulted in Defendants’ failure to maintain temperature
19 providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of
20 the applicable IWC Wage Orders. Plaintiff and the Class members may therefore pursue damages
21 and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable
22 IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in
23 an amount to be determined at trial.

24 **ELEVENTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

27 136. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 137. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
2 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
3 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
4 harmful to Employees and the general public. Plaintiff seek to enforce important rights affecting
5 the public interest within the meaning of Code of Civil Procedure § 1021.5.

6 138. Plaintiff is a “person” within the meaning of Business & Professions Code
7 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
8 injunctive relief, restitution, and other appropriate equitable relief.

9 139. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
10 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
11 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
12 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
13 Class members for all hours worked or reimburse them for necessary business expenses, due to
14 systematic business practices as alleged herein that cannot be justified, pursuant to the applicable
15 California Labor Code and Industrial Welfare Commission requirements in violation of California
16 Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
17 and equitable relief, pursuant to California Business & Professions Code § 17203, including
18 restitution of wages wrongfully withheld.

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

26 141. Defendants have violated statutes and public policies. Through the conduct alleged
27 in this Complaint Defendants have acted contrary to these public policies, have violated specific
28 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in

1 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
2 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
3 guaranteed to all employees under the law.

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

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

10 144. By the conduct alleged herein, Defendants have engaged and continue to engage in
11 a business practice which violates California and federal law, including but not limited to, the
12 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
13 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
14 should issue declaratory and other equitable relief pursuant to California Business & Professions
15 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
16 competition, including restitution of wages wrongfully withheld.

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

19 146. Unless restrained by this Court, Defendants will continue to engage in the unlawful
20 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
21 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
22 the use by Defendants or their agents or employees of any unlawful or deceptive practice
23 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
24 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
25 failed to pay.

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

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

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

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

150. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

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

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and

1 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
3 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
4 to Labor Code § 2699(g)(1);

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

13 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
14 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
15 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
16 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
17 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
18 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
19 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
20 providing inaccurate wage statements and failing to maintain records as required under Labor
21 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
22 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
23 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
24 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
25 citation, ...";

26 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
27 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
28 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,

1 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
2 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
3 § 2699(g)(1);

4 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
5 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
6 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
7 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
8 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
9 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
10 pursuant to Labor Code § 2699(g)(1);

11 (f) Failure to Maintain Temperatures: For failure to maintain temperature
12 providing reasonable comfort constituting violations of Labor Code §§ 1198 and 1199 and
13 paragraph 15 of the applicable IWC Wage Orders, and Labor Code § 2699.5, and seeking
14 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
15 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
16 2699(g)(1); and

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

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

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

1 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
2 employee.

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

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

11 153. Plaintiff has exhausted his administrative remedies by sending a certified letter to
12 the LWDA and Defendants postmarked on **May 22, 2020** addressing in detail the specific
13 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
14 to support the alleged violations and requested penalties. The LWDA has not provided notice of its
15 intent to investigate the alleged violations within 65 calendar days of the postmark date of the
16 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
17 herein and in the PAGA Notice letter and the original Complaint.

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20 1. For an order certifying this action as a class action;
- 21 2. For compensatory damages in the amount of the unpaid minimum wages for work
22 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
23 the filing of this action, as may be proven;
- 24 3. For liquidated damages in the amount equal to the unpaid minimum wage and
25 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 26 4. For compensatory damages in the amount of all unpaid wages, including overtime
27 and double-time pay, as may be proven;
- 28 5. For compensatory damages in the amount of the hourly wage made by Employees
for each missed or deficient meal period where no premium pay was paid therefor from four (4)
years prior to the filing of this action, as may be proven;

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

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

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

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

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

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

14 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
15 pay minimum wages;

16 13. For damages and civil penalties as appropriate under Labor Code §§ 1198 and 1199
17 and paragraphs 15 and 20 of the applicable IWC Wage Orders for Defendants' failure to maintain
18 reasonable temperatures in the workplace, as may be proven;

19 14. For restitution for unfair competition pursuant to Business & Professions Code
20 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

26 18. For other wages and penalties under the Labor Code as may be proven;

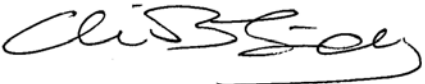
27 19. For all general, special, and incidental damages as may be proven;

28 20. For an award of pre-judgment and post-judgment interest;

- 1 21. For an award providing for the payment of the costs of this suit;
2 22. For an award of attorneys' fees; and
3 23. For such other and further relief as this Court may deem proper and just.

4
5 DATED: August 3, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

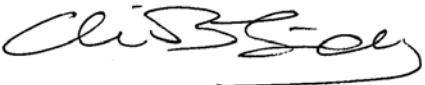
6
7 By 
8 David Yeremian
9 Alvin B. Lindsay
10 Attorneys for Plaintiff ARUTYUN H.
11 ADZHEMYAN, on behalf of himself and all
12 others similarly situated
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DEMAND FOR JURY TRIAL

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

DATED: August 3, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff ARUTYUN H.
ADZHEMYAN, on behalf of himself and all
others similarly situated

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

Sherry B. Shavit
sshavit@tharpe-howell.com
THARPE & HOWELL, LLP
 15250 Ventura Blvd., 9th Fl.
 Sherman Oaks, CA 91403

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

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Executed on August 6, 2020, at Glendale, California.

Natalia Bermudes