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THE SUPERIOR COURT  
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CASE NUMBER:

**RG20074365**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA**

FRANK RODRIGUEZ, on behalf of the State of  
California and Aggrieved Employees,

Plaintiffs,

vs.

LINKUS ENTERPRISES, LLC, and DOES 1-50,  
inclusive,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR PENALTIES  
PURSUANT TO SECTIONS 2699(a) and (f)  
OF THE CALIFORNIA LABOR CODE  
PRIVATE ATTORNEYS GENERAL ACT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Frank Rodriguez, on behalf of the State of California and Aggrieved Employees  
2 (collectively "Plaintiff"), complains and alleges as follows:

### 3 INTRODUCTION

4 1. Plaintiff brings this enforcement action on behalf of the State of California against  
5 Defendant LinkUS Enterprises, LLC ("Defendant") for its systematic violations of California labor  
6 law with respect to Defendant's current and former non-exempt hourly technicians and lead  
7 technicians ("Technicians") in California (the "Aggrieved Employees").

8 2. This Private Attorneys General Act ("PAGA") action against Defendant challenges its  
9 policies and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours  
10 worked; (2) failing to pay Plaintiff and Aggrieved Employees the minimum wage for all hours worked  
11 as required by California law; (3) failing to pay Plaintiff and Aggrieved Employees overtime wages  
12 as required by California law for hours worked over eight hours in a day and/or forty hours in a week;  
13 (4) failing to authorize and permit Plaintiff and Aggrieved Employees to take rest breaks as required  
14 under California law; (5) failing to provide meal breaks to Plaintiff and Aggrieved Employees as  
15 required under California law (5) failing to provide Plaintiff and Aggrieved Employees accurate,  
16 itemized wage statements; and (6) failing to timely pay Plaintiff and Aggrieved Employees all wages  
17 upon separation.

18 3. Plaintiff and Aggrieved Employees are current and former non-exempt hourly  
19 employees of Defendant who worked and currently work as Technicians.

20 4. At all relevant times, Defendant has failed to pay for all hours worked at the appropriate  
21 rate because it has failed to pay Plaintiff and Aggrieved Employees at the overtime rate for their hours  
22 worked over eight in a day or over forty hours in a week, has failed to separately compensate rest  
23 period time and has failed to pay for time spent performing work off-the-clock during meal periods  
24 and at the end of work shifts.

25 5. Defendant's compensation system utilizes a piece-rate system that compensates  
26 Technicians for: (1) an assigned piece-rate per job, (2) non-productive work time not spent on a piece  
27

1 rate job and (3) other hours worked. Each piece rate job is assigned a specific number of designated  
2 points and a set value of hours to complete the job, regardless of the time actually spent on the job.  
3 Each point is assigned a dollar amount depending on the Technician's level of experience.  
4 Technicians' time spent on a piece rate job, up to the ceiling of the time value assigned to the job, is  
5 compensated according to the job's assigned points. If a Technician spends longer than the time value  
6 assigned to complete a job, the Technician is paid minimum wage for further time spent completing  
7 the job. Technicians' time spent in between jobs, including gathering equipment and driving to sites,  
8 is paid at the minimum wage.

9         6. Technicians' workdays do not end until they complete all the job assignments for the  
10 day. Plaintiff typically worked up to 55 hours per week.

11         7. At all relevant times, Defendant has maintained a longstanding policy and practice of  
12 failing to properly compensate non-exempt hourly employees for work performed during meal  
13 periods and rest periods. These policies and practices deny Plaintiff and Aggrieved Employees  
14 payment for all hours worked, including overtime, and deny Plaintiff and Aggrieved Employees meal  
15 and rest periods that comply with California law. Defendant has failed to pay premium pay owed for  
16 missed meal and rest periods.

17         8. At all relevant times, Defendant has maintained a longstanding policy and practice of  
18 failing to properly compensate non-exempt hourly employees for off-the-clock work performed after  
19 clocking out at the end of shifts. After clocking out, Technicians spend time on various tasks,  
20 including answering emails and phone calls, assisting other Technicians with completing jobs and  
21 completing paperwork, but such time is not paid.

22         9. Defendant violates California law by knowingly and willfully requiring Plaintiff and  
23 Aggrieved Employees to perform work during meal and rest periods, subjecting them to interruption  
24 during those times. Defendant requires Aggrieved Employees to manually clock out for their unpaid  
25 meal periods, even though Aggrieved Employees remain on duty and are continuously subject to  
26 interruption during that time.

10. As a result of the foregoing failures to pay for all hours worked at the appropriate rates, Plaintiff and Aggrieved Employees are not paid all amounts owed following their separation from employment.

11. The wage statements provided by Defendant do not accurately set forth all of the information required by California law. The wage statements fail to accurately report the hours worked and the amount of wages and overtime pay to which Plaintiff and Aggrieved Employees are entitled. As a result, Plaintiff and Aggrieved Employees cannot readily determine from the wage statements alone the compensation owed to them.

12. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the PAGA.

## PARTIES

13. Plaintiff and Aggrieved Employees are current and former non-exempt hourly Technicians employed by Defendant during all relevant times throughout California.

14. Plaintiff Frank Rodriguez is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California.

15. Plaintiff was employed by Defendant from approximately October 2005 until April 21, 2020. Plaintiff worked for Defendant as a Technician in the County of San Bernardino.

16. Defendant LinkUS Enterprises, LLC is a Delaware limited liability corporation with its principal place of business in Fresno. Defendant is registered to do business in California. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-exempt hourly Technicians throughout California, including in Alameda County.

17. Plaintiff is informed, believes, and thereon alleges that Defendant is a full service low-voltage integration firm that provides residential and commercial clients with solutions in automation, audio and video entertainment, security, and lighting control as well as installs satellites in the western region of the United States, including in California.

1        18.     The true names and capacities, whether individual, corporate, associate, or  
2 otherwise, of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe  
3 Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of  
4 these fictitiously-named Defendants is responsible in some manner for the occurrences and  
5 violations as herein alleged. Plaintiff will amend this Complaint to show their true names and  
6 capacities when they have been ascertained. Defendant and Doe Defendants are jointly and  
7 severally liable for the civil penalties asserted.

8        19.     At all relevant times, Defendant has done business under the laws of California, and  
9 has employed Aggrieved Employees in this judicial district. Defendant is a “person” as defined in  
10 Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an “employer” as  
11 that term is used in the Labor Code, and Industrial Welfare Commission (“IWC”) Wage Orders.

12                    **SUBJECT MATTER JURISDICTION AND VENUE**

13        20.     This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.  
14 The Court also has jurisdiction over Defendant because Defendant does business in the State of  
15 California, is authorized to do business in California, and is registered with the California Secretary  
16 of State.

17        21.     Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393  
18 and/or 395.5. Defendant conducts business and employs Aggrieved Employees throughout the state  
19 of California, including in the County of Alameda.

20                    **FACTUAL ALLEGATIONS**

21        22.     Defendant employs Plaintiff and Aggrieved Employees as Technicians to provide  
22 satellite television installation services.

23        23.     Plaintiff and Aggrieved Employees are responsible for multiple daily customer visits  
24 using a vehicle provided by Defendant; site surveys, in which they determine the best positioning  
25 for satellite television equipment for the strongest signal reception; satellite television installation,  
26 including placing mounts, satellite dishes, and receivers; and educating customers regarding  
27 satellite television services and equipment.

1           24. Defendant requires Plaintiff and Aggrieved Employees to perform work off-the-clock  
2 without compensation. In particular, Defendant requires Plaintiff and Aggrieved Employees to  
3 assist other Technicians with completing assignments and to perform other tasks such as filling out  
4 paperwork and responding to work-related emails and calls, after clocking out at the end of their  
5 shifts.

6           25. Defendant requires Plaintiff and Aggrieved Employees to work beyond the statutory  
7 maximum times without meal breaks. Defendant routinely fails to provide Plaintiff and Aggrieved  
8 Employees with opportunities to take timely and compliant off-duty meal periods during their  
9 shifts. Meal breaks are either regularly not made available by Defendant or are interrupted by  
10 Defendant. Plaintiff and Aggrieved Employees regularly work through the fifth hour of their shifts,  
11 without the possibility of taking meal breaks, as they are required to closely attend to scheduled  
12 appointments with customers . Plaintiff and Aggrieved Employees are not provided premium  
13 payments for missed or interrupted meal periods.

14           26. Defendant requires Plaintiff and Aggrieved Employees to work beyond the statutory  
15 maximum times without rest breaks. Defendant routinely fails to authorize or permit rest breaks as  
16 Plaintiffs and Aggrieved Employees are required to closely attend to scheduled appointments with  
17 customers and Defendant considers rest breaks to be when Plaintiff and Aggrieved Employees are  
18 driving to another site. Plaintiff and Aggrieved Employees are not separately compensated for rest  
19 period time. Further, Plaintiff and Aggrieved Employees are not provided premium payments for  
20 missed or interrupted rest periods.

21           27. Even when Defendant fails to provide Plaintiff and Aggrieved Employees with their  
22 meal breaks, Defendant requires Technicians to manually clock out for 30 minutes to make it look  
23 as if they took a meal break when in fact they did not. If Plaintiff and Aggrieved Employees fail to  
24 record taking a meal break – even if they do not take a break – Defendant alters the Technicians’  
25 time records to make it appear as though Technicians are taking compliant meal breaks. As a result,  
26 Plaintiff and Aggrieved Employees perform work off-the-clock without pay during meal periods.  
27

28. The wage and hour violations described above that Plaintiff and Aggrieved Employees face are compounded by the confusing and deficient wage statements that Defendant provides them. The paystubs Defendant provides to Plaintiff and Aggrieved Employees do not accurately reflect the hours worked or the wages earned by Technicians.

29. Furthermore, as a result of the above-described violations, compensation for all the off-the-clock work, unpaid overtime, and premium pay for missed meal and rest breaks remains outstanding after Plaintiff and Aggrieved Employees' separation from employment.

30. On information and belief, Defendant's conduct described above has occurred at all relevant times and is ongoing.

31. On June 29, 2020, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served the California Labor and Workforce Development Agency ("LWDA") with a notice of his intention to file a PAGA action for violations of Labor Code §§ 204 (failure to compensate for all hours worked); 510 (failure to pay overtime wages); 1194 (failure to pay minimum wage); 226.7 (failure to provide rest periods); 512 (failure to provide meal periods); 226 (failure to timely provide compliant accurate itemized wage statements); 201-203 (failure to timely pay all wages owed upon separation); and Business and Professions Code §§ 17200, *et seq.* (engaging in unfair business practices). On the same day, Plaintiff served Defendant's registered agent with a courtesy copy of the notice via certified mail. Sixty-five calendar days have passed without notice from the LWDA of intent to pursue the claim. As such, Plaintiff has satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a), (f).

#### **FIRST CAUSE OF ACTION**

**Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 226, 226.2, 226.6**

**(Wage Statement Violations)**

**(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive - On Behalf of All Aggrieved Employees)**

32. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

33. Labor Code § 2699(a) provides:  
Notwithstanding any other provision of law, any provision of this code

that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

34. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

35. Labor Code § 226.6 provides as follows:

Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law.

36. The applicable IWC Wage Order also establishes this requirement. (See IWC Wage Order 4-2001(7)).

37. Labor Code § 226(e)(1) provides:

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

1           38. Labor Code § 226.2(a)(2) provides in relevant part:

2           [T]he itemized statement required by subdivision (a) of Section 226 shall,  
3           in addition to the other items specified in that subdivision, separately state  
4           the following, to which the provisions of Section 226 shall also be  
5           applicable: (A) The total hours of compensable rest and recovery periods,  
6           the rate of compensation, and the gross wages paid for those periods during  
7           the pay period. (B) Except for employers paying compensation for other  
8           nonproductive time in accordance with paragraph (7), the total hours of  
9           other nonproductive time, as determined under paragraph (5), the rate of  
10          compensation, and the gross wages paid for that time during the pay period.

11          39. Defendant fails to provide timely accurate, itemized wage statements to Plaintiff and  
12          Aggrieved Employees in accordance with Labor Code §§ 226(a), 226.2 and the IWC Wage Order.  
13          In particular, the wage statements Defendant provides to Technicians, including to Plaintiff and  
14          Aggrieved Employees, do not accurately reflect the actual hours worked, actual gross wages earned,  
15          actual net wages earned or wages paid for rest periods. This is because, in part, Defendant does not  
16          count as “hours worked” the off-the-clock time its hourly, non-exempt Technicians spend performing  
17          work during meal periods and after clocking out at the end of a shift. As a result of Defendant’s  
18          violations, Plaintiff and Aggrieved Employees are required to undertake the difficult task of  
19          attempting to reconstruct Defendant’s incomplete and inaccurate pay records to try to determine  
20          whether they are paid for all hours worked as required by California law.

21          40. Defendant’s failure to comply with Labor Code § 226(a) was and continues to be  
22          knowing and intentional. Although, as alleged herein, Defendant is aware that Plaintiff and  
23          Aggrieved Employees perform off-the-clock work, Defendant systematically fails to include this  
24          time worked in Plaintiff and the Aggrieved Employees’ wage statements.

25          41. Plaintiff and aggrieved employees suffered injury as a result of Defendant’s knowing  
26          and intentional failure to provide timely, accurate itemized wage statements to Plaintiff and the  
27          Aggrieved Employees in accordance with Labor Code § 226(a). As the wage statements fail to  
28          accurately report the hours worked and the amount of wages and overtime pay to which Plaintiff and  
29          Aggrieved Employees are entitled, Plaintiff and Aggrieved Employees cannot readily determine  
30          from the wage statements alone the compensation owed to them.

42. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements in compliance with Labor Code § 226(a).

43. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

44. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

45. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

46. Wherefore, Plaintiff requests relief as hereinafter provided.

**SECOND CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 510 and 1194 (Failure to Pay Overtime)**  
**(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of All Aggrieved Employees)**

47. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

48. Labor Code § 510(a) provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

49. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

1 ...shall not be employed more than eight (8) hours in any workday or more  
2 than 40 hours in any workweek unless the employee receives one and one-  
3 half (1 ½) times such employee's regular rate of pay for all hours worked  
4 over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's  
5 work. Employment beyond eight (8) hours in any workday or more than  
6 six (6) days in any workweek is permissible provided the employee is  
compensated for such overtime at not less than ... [o]ne and one-half (1½)  
times the employee's regular rate of pay for all hours worked in excess of  
eight (8) hours up to and including 12 hours in any workday, and for the first  
eight (8) hours worked on the seventh (7<sup>th</sup>) consecutive day of work in a  
workweek....

7 50. Labor Code § 1194(a) provides as follows:

8 Notwithstanding any agreement to work for a lesser wage, any employee  
9 receiving less than the legal minimum wage or the legal overtime  
10 compensation applicable to the employee is entitled to recover in a civil  
11 action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorneys'  
fees, and costs of suit.

12 51. Defendant has failed to pay all overtime wages owed to Plaintiff and Aggrieved  
13 Employees by virtue of the Defendant's requirement that Technicians perform work and/or remain  
14 on duty during meal and rest periods. Defendants' policies and practices of requiring Aggrieved  
15 Employees to perform work off-the-clock during meal periods are unlawful and results in overtime  
16 violations. As a result of these unlawful policies and practices, Aggrieved Employees have worked  
17 overtime hours for Defendants without being paid overtime wages in violation of the Labor Code  
18 and the applicable IWC Wage Order.

19 52. Labor Code § 225.5 provides that every person who unlawfully withholds wages due  
20 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty  
21 of \$100 for any initial violation for each failure to pay each employee and \$200 for each  
22 subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

23 53. Labor Code § 223 provides, in relevant part, that: "Where any statute or contract  
24 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a  
25 lower wage while purporting to pay the wage designated by statute or by contract."

26 54. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay  
27 overtime wages in violation of Labor Code §§ 510 and 1194 throughout California on behalf of

1 himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

2 55. Labor Code 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each  
3 aggrieved employee per pay period for the initial violation of a Labor Code provision that does not  
4 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.  
5 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved  
6 employee per pay period for each subsequent violation of a Labor Code provision that does not  
7 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

8 56. Defendants are liable to Plaintiff, the State of California, and aggrieved employees for  
9 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an  
10 award of attorneys' fees and costs as set forth below.

11 57. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **THIRD CAUSE OF ACTION**

13 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.7**  
14 **(Rest Period Violations)**  
15 **(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of**  
16 **All Aggrieved Employees)**

17 58. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
18 herein.

19 59. Labor Code § 226.7 provides, in relevant part:

20 (b) An employer shall not require an employee to work during a meal or  
21 rest or recovery period mandated pursuant to an applicable statute, or  
22 applicable regulation, standard, or order of the Industrial Welfare  
23 Commission, the Occupational Safety and Health Standards Board, or the  
24 Division of Occupational Safety and Health.

25 (c) If an employer fails to provide an employee a meal or rest or recovery  
26 period in accordance with a state law, including, but not limited to, an  
27 applicable statute or applicable regulation, standard, or order of the  
28 Industrial Welfare Commission, the Occupational Safety and Health  
Standards Board, or the Division of Occupational Safety and Health, the  
employer shall pay the employee one additional hour of pay at the  
employee's regular rate of compensation for each workday that the meal or  
rest or recovery period is not provided.

60. Defendant fails to authorize and permit rest periods by knowingly and willfully

1 requiring Plaintiff and Aggrieved Employees to perform work during rest periods, including  
2 subjecting them to interruption during such times. Defendant considers time spent driving to sites  
3 to be a rest period.

4 61. As separately alleged herein, Defendant fails to separately compensate rest periods  
5 and other non-productive time pursuant to the requirements of Labor Code § 262.2. Such violation  
6 systematically discourages rest periods, and thus results in a failure to authorize and permit rest  
7 periods in violation of Labor Code § 226.7.

8 62. Labor Code § 226.6 provides as follows:

9 Any employer who knowingly and intentionally violates the provisions of  
10 Section 226, or any officer, agent, employee, fiduciary, or other person who  
11 has the control, receipt, custody, or disposal of, or pays, the wages due any  
12 employee, and who knowingly and intentionally participates or aids in the  
13 violation of any provision of Section 226 is guilty of a misdemeanor and,  
upon conviction thereof, shall be fined not more than one thousand dollars  
(\$1,000) or be imprisoned not to exceed one year, or both, at the discretion  
of the court. That fine or imprisonment, or both, shall be in addition to any  
other penalty provided by law.

14 63. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each failure by  
15 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees rest periods in compliance  
16 with Labor Code § 226.7.

17 64. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
18 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does  
19 not provide a civil penalty if, at the time of the violation, the employer employs one or more  
20 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each  
21 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that  
22 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
23 employees.

24 65. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved  
25 Employees, and himself as set forth in Labor Code § 2699(g)(i).

26 66. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for  
27

1 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an  
2 award of attorneys' fees and costs as set forth below.

3 67. Wherefore, Plaintiff requests relief as hereinafter provided.

4  
5 **FOURTH CAUSE OF ACTION**  
6 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 512**  
7 **(Meal Period Violations)**  
8 **(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of**  
9 **All Aggrieved Employees)**

10 68. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
11 herein.

12 69. Labor Code § 512 provides, in relevant part: "An employer shall not employ an  
13 employee for a work period of more than five hours per day without providing the employee with a  
14 meal period of not less than 30 minutes..."

15 70. Defendant knowingly and willfully has required Plaintiff and Aggrieved Employees  
16 to perform work and/or remain on duty during meal periods. Defendant requires Plaintiff and  
17 Aggrieved Employees to manually clock out for their unpaid meal periods, even though Plaintiff  
18 and Aggrieved Employees remain on duty and are continuously subject to interruption during that  
19 time.

20 71. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each failure by  
21 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees meal periods in compliance  
22 with Labor Code § 512.

23 72. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
24 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does  
25 not provide a civil penalty if, at the time of the violation, the employer employs one or more  
26 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each  
27 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that  
28 does not provide a civil penalty if, at the time of the violation, the employer employs one or more

employees.

73. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

74. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

75. Wherefore, Plaintiff requests relief as hereinafter provided.

**FIFTH CAUSE OF ACTION**  
**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204, 226.2, 558 and 1194, 1197, 1197.1, 1198**  
**(Failure to Pay All Hours Worked)**  
**(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of All Aggrieved Employees)**

76. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

77. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

78. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f) as set forth above. Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's violations of Labor Code §§ 204 and 1194.

79. Labor Code § 204 provides that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month...."

1        80. California law further requires that employers pay their employees for all hours  
2 worked at the statutory or agreed upon rate. No part of the rate may be used as a credit against a  
3 minimum wage obligation.

4        81. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an  
5 employee is subject to the control of an employer, and includes all the time the employee is suffered  
6 or permitted to work, whether or not required to do so.”

7        82. Labor Code § 200 defines wages as “all amounts for labor performed by employees  
8 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,  
9 commission basis or method of calculation.”

10       83. Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages  
11 because of the payment of a wage less than minimum wage fixed by an order of the commission,  
12 an employer shall be entitled to recover liquidated damages in an amount equal to the wages  
13 unlawfully unpaid and interest thereon.

14       84. Labor Code § 1198 provides that “[t]he maximum hours of work and the standard  
15 conditions of labor fixed by the commission shall be the maximum hours of work and the standard  
16 conditions of labor for employees. The employment of any employee for longer hours than those  
17 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

18       85. Under Labor Code § 558, any employer who violates “a section of this chapter or any  
19 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
20 shall be subject to a civil penalty as follows”:

21            (1) For any initial violation, fifty dollars (\$50) for each underpaid employee  
22            for each pay period for which the employee was underpaid in addition to an  
             amount sufficient to recover underpaid wages.

23            (2) For each subsequent violation, one hundred dollars (\$100) for each  
24            underpaid employee for each pay period for which the employee was  
             underpaid in addition to an amount sufficient to recover underpaid wages.

25       86. Labor Code § 1197 provides that: “The minimum wage for employees fixed by the  
26 commission or by any applicable state or local law, is the minimum wage to be paid to employees,  
27

1 and the payment of a lower wage than the minimum so fixed is unlawful...”

2 87. Labor Code § 1197.1 provides that the payment of less than the minimum wage  
3 “...shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the  
4 employee, and any applicable penalties imposed pursuant to Section 203 as follows”:

5 (1) For any initial violation that is intentionally committed, one hundred  
6 dollars (\$100) for each underpaid employee for each pay period for which  
7 the employee is underpaid. This amount shall be in addition to an amount  
8 sufficient to recover underpaid wages, liquidated damages pursuant to  
9 Section 1194.2, and any applicable penalties imposed pursuant to Section  
10 203.

11 (2) For each subsequent violation for the same specific offense, two hundred  
12 fifty dollars (\$250) for each underpaid employee for each pay period for  
13 which the employee is underpaid regardless of whether the initial violation  
14 is intentionally committed. This amount shall be in addition to an amount  
15 sufficient to recover underpaid wages, liquidated damages pursuant to  
16 Section 1194.2, and any applicable penalties imposed pursuant to Section  
17 203.

18 (3) Wages, liquidated damages, and any applicable penalties imposed  
19 pursuant to Section 203, recovered pursuant to this section shall be paid to  
20 the affected employee.

21 88. Labor Code § 226.2(a)(3)(A) provides, in relevant part, that for employees  
22 compensated on a piece-rate basis:

23 Employees shall be compensated for rest and recovery periods at a regular  
24 hourly rate that is no less than the higher of: (i) An average hourly rate  
25 determined by dividing the total compensation for the workweek, exclusive  
26 of compensation for rest and recovery periods and any premium  
27 compensation for overtime, by the total hours worked during the workweek,  
28 exclusive of rest and recovery periods. (ii) The applicable minimum wage.

89. Labor Code § 225.5 provides that every person who unlawfully withholds wages due  
any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty  
of \$100 for any initial violation for each failure to pay each employee and \$200 for each  
subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

90. Labor Code § 223 provides, in relevant part, that: “Where any statute or contract  
requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a  
lower wage while purporting to pay the wage designated by statute or by contract.”

91. By virtue of Defendant’s failures to provide compensation for rest periods, Defendant

1 has violated Labor Code §§ 226.2, 204 and 1194. By virtue of Defendant's failures to provide  
2 compensation for off-the-clock work performed during meal periods and after clocking out at the  
3 end of Technician's shifts, Defendant has violated Labor Code §§ 204 and 1194.

4 92. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with  
5 notice of his intention to file a claim for violations of Labor Code §§ 204 and 1194. Sixty-five  
6 calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative  
7 prerequisites to commence this civil action in compliance with § 2699.3(a).

8 93. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved  
9 Employees, and himself as set forth in Labor Code § 2699(g)(i).

10 94. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for  
11 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an  
12 award of attorneys' fees and costs as set forth below.

13 95. Wherefore, Plaintiff requests relief as hereinafter provided.

14  
15 **SIXTH CAUSE OF ACTION**  
16 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 201-**  
17 **203 (Waiting Time Penalties)**  
18 **(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of All**  
19 **Aggrieved Employees)**

20 96. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
21 herein.

22 97. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and  
23 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after  
24 she or he quits.

25 98. Labor Code § 203 provides, in relevant part:

26 If an employer willfully fails to pay, without abatement or reduction, in  
27 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an  
28 employee who is discharged or who quits, the wages of the employee shall  
continue as a penalty from the due date thereof at the same rate until paid  
or until an action therefore is commenced; but the wages shall not continue  
for more than 30 days.

1        99. As a result of the Defendant's violations of Labor Code §§ 204, 226.2 and 510,  
2 Defendant failed to timely pay all wages owed upon separation in violation of Labor Code §§ 201  
3 – 203.

4        100. Plaintiff seeks civil penalties pursuant to Sections 225.5 and 256 of the California  
5 Labor Code.

6        101. Labor Code § 256 provides that the Labor Commissioner shall impose a civil penalty  
7 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

8        102. Labor Code § 225.5 provides that every person who unlawfully withholds wages due  
9 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty  
10 of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent  
11 violation, or any willful or intentional violation, for each failure to pay each employee.

12        103. Labor Code § 223 provides, in relevant part, that: "Where any statute or contract  
13 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a  
14 lower wage while purporting to pay the wage designated by statute or by contract."

15        104. Plaintiff and some of the Aggrieved Employees have left their employment with  
16 Defendant during the statutory period, at which time Defendant owed them unpaid wages. These  
17 earned, but unpaid, wages derive from time spent working through their meal and rest breaks  
18 without pay, and overtime compensation that was not accounted for as a result of Technician's  
19 performance of work off-the-clock during meal periods and after clocking out at the end of work  
20 shifts.

21        105. As alleged above, Defendant is aware that Plaintiff and Aggrieved Employees have  
22 performed required off-the-clock work during meal periods and after clocking out at the end of work  
23 shifts, Defendant still refuses to pay Plaintiff and Aggrieved Employees for the off-the-clock work  
24 performed. As alleged above, Defendant is aware that Plaintiff and Aggrieved Employees have  
25 performed work during rest periods without separate compensation, Defendant still refuses to pay  
26 Plaintiff and Aggrieved Employees for the work performed during rest periods.

106. Accordingly, Defendant willfully refused and continues to refuse to pay those Aggrieved Employees that left their employment with Defendant all the wages that were due and owing them upon the end of their employment. As a result of Defendants' actions, Plaintiff and the Aggrieved Employees have suffered and continue to suffer substantial losses, including lost earnings, and interest.

107. Defendants' willful failure to pay Plaintiff and the aggrieved employees the wages due and owing them constitutes a violation of Labor Code §§ 201-203.

108. On information and belief, Defendants' conduct has been substantially the same at all relevant times throughout the state of California.

109. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for herein. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

110. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

111. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

112. Wherefore, Plaintiff requests relief as hereinafter provided.

## SEVENTH CAUSE OF ACTION

**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.2 (Failure to Properly Compensate Piece Rate Workers for Rest and Recovery Periods, and Other Nonproductive Time; Failure to Provide Compliant Itemized Wage Statements for Rest and Recovery Periods and Other Nonproductive Time)  
(Against LINKUS ENTERPRISES, LLC, and DOES 1-50, inclusive – On Behalf of All Aggrieved Employees)**

1           161. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth  
2 herein.

3           162. California Labor Code § 226.2 provides:  
4 This section shall apply for employees who are compensated on a piece-rate  
5 basis for any work performed during a pay period. This section shall not be  
6 construed to limit or alter minimum wage or overtime compensation  
7 requirements, or the obligation to compensate employees for all hours  
8 worked under any other statute or local ordinance. For the purposes of this  
9 section, "applicable minimum wage" means the highest of the federal, state,  
10 or local minimum wage that is applicable to the employment, and "other  
11 nonproductive time" means time under the employer's control, exclusive of  
12 rest and recovery periods, that is not directly related to the activity being  
13 compensated on a piece-rate basis.

14           163. California Labor Code § 226.2(a)(1)-(2) provides:

15 For employees compensated on a piece-rate basis during a pay period, the  
16 following shall apply for that pay period: (1) Employees shall be  
17 compensated for rest and recovery periods and other nonproductive time  
18 separate from any piece-rate compensation; (2) The itemized statement  
19 required by subdivision (a) of Section 226 shall, in addition to the other items  
20 specified in that subdivision, separately state the following, to which the  
21 provisions of Section 226 shall also be applicable: (A) The total hours of  
22 compensable rest and recovery periods, the rate of compensation, and the  
23 gross wages paid for those periods during the pay period; (B) Except for  
24 employers paying compensation for other nonproductive time in accordance  
25 with paragraph (7), the total hours of other nonproductive time, as  
26 determined under paragraph (5), the rate of compensation, and the gross  
27 wages paid for that time during the pay period.

28           164. Labor Code § 226.2(a)(3)(A), (B) provides:

(3)(A) Employees shall be compensated for rest and recovery periods at a  
regular hourly rate that is no less than the higher of: (i) An average hourly  
rate determined by dividing the total compensation for the workweek,  
exclusive of compensation for rest and recovery periods and any premium  
compensation for overtime, by the total hours worked during the workweek,  
exclusive of rest and recovery periods. (ii) The applicable minimum wage.

(B) For employers who pay on a semimonthly basis, employees shall be  
compensated at least at the applicable minimum wage rate for the rest and  
recovery periods together with other wages for the payroll period during  
which the rest and recovery periods occurred. Any additional compensation  
required for those employees pursuant to clause (i) of subparagraph (A) is  
payable no later than the payday for the next regular payroll period.

          165. California Labor Code § 226.2(a)(4)-(5), (7) provides:

(4) Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

(5) The amount of other nonproductive time may be determined either through actual records or the employer's reasonable estimates, whether for a group of employees or for a particular employee, of other nonproductive time worked during the pay period.

(7) An employer who, in addition to paying any piece-rate compensation, pays an hourly rate of at least the applicable minimum wage for all hours worked, shall be deemed in compliance with paragraph (4).

166. Defendant fails to provide timely, accurate, itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code § 226.2(a)(1)-(2) and the IWC Wage Order. In particular, the wage statements Defendant provides its employees, including to Plaintiff and Aggrieved Employees, do not reflect the total hours, rate of compensation, or gross wages for either rest and recovery periods, or other nonproductive time. This is because Defendant fails to pay Technicians for rest periods. In addition, Defendant does not count as "hours worked" the off-the-clock time its hourly, non-exempt Technicians spend performing work activities outside of their scheduled paid shifts and other work-related activities.

167. Further, Defendant fails to properly compensate Plaintiff and Aggrieved Employees in accordance with Labor Code Section 226.2(a) (1), (3)-(5), (7). In particular, Defendant fails to compensate Plaintiff's and Aggrieved Employees' rest and recovery periods at the higher of either "(i) [a]n average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods[;] or (ii) [t]he applicable minimum wage." Cal. Labor Code § 226.2(a) (3)(A). Defendant further fails to compensate Plaintiff's and Aggrieved Employees' other nonproductive time at an hourly rate that is no less than the applicable minimum wage. Cal. Labor Code § 226.2(a)(4).

168. Defendant's failure to comply with Labor Code § 226.2 was and continues to be knowing and intentional. Although, as alleged herein, Defendant is aware that Plaintiff and Aggrieved Employees perform off-the-clock work, allegedly took rest breaks, and perform other nonproductive

1 work tasks, Defendant systematically fails to include this time worked in Plaintiff's and Aggrieved  
2 Employees' wage statements and fails to properly compensate Plaintiff and Aggrieved Employees for  
3 all rest and recovery periods and other nonproductive time under Labor Code § 226.2.

4 169. Plaintiff and Aggrieved Employees suffered injury as a result of Defendant's knowing  
5 and intentional failure to provide timely, accurate itemized wage statements to Plaintiff and  
6 Aggrieved Employees in accordance with Labor Code § 226.2. Plaintiff and Aggrieved  
7 Employees have also suffered injury as a result of Defendant's knowing and intentional failure to  
8 provide proper compensation for rest and recovery periods and other nonproductive time in  
9 accordance with Labor Code § 226.2. In particular, the injury stemming from Defendant's violations  
10 is evidenced by this live and active dispute regarding unpaid wages, including, overtime pay, between  
11 the parties. As alleged herein, as a result of Defendant's violations, Plaintiff and aggrieved  
12 employees are required to undertake the difficult and costly task of attempting to reconstruct  
13 Defendant's incomplete and inaccurate pay records to determine whether they are paid for all hours  
14 worked as required by California law.

15 170. On information and belief, Defendants' conduct has been substantially the same at all  
16 relevant times throughout the State of California.

17 171. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for  
18 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does  
19 not provide a civil penalty if, at the time of the violation, the employer employs one or more  
20 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each  
21 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that  
22 does not provide a civil penalty if, at the time of the violation, the employer employs one or more  
23 employees.

24 172. Plaintiff seeks to recover civil penalties from Defendants' for their violations of  
25 Labor Code § 226.2 throughout California on behalf of himself, the State of California, and other  
26 aggrieved employees pursuant to Labor Code § 2699(f).  
27

174. Defendants are liable to Plaintiff, the State of California, and aggrieved employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

175. Wherefore, Plaintiff requests relief as hereinafter provided.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff and Aggrieved Employees civil penalties to the full extent provided for under the PAGA;
3. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
4. For all costs of suit, as provided in Labor Code § 2699(g)(1);
5. For interest on any penalties awarded, as provided by applicable law; and
6. For such other and further relief as this Court deems just and proper.

Date: September 18, 2020

Respectfully submitted,



Carolyn H. Cottrell

Caroline N. Cohen

Scott L. Gordon

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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California and Aggrieved Employees*

