

1 **MAYALL HURLEY**  
2 **A Professional Corporation**  
3 **2453 Grand Canal Boulevard, Second Floor**  
4 **Stockton, California 95207-8253**  
5 **Telephone (209) 477-3833**  
6 **Facsimile (209) 473-4818**  
7 **VLADIMIR J. KOZINA (SBN: 284645)**  
8 **JOHN P. DANELON (SBN: 271743)**

9 **Attorneys for Plaintiff, JAMES BEASLEY**

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN JOAQUIN**

12 **JAMES BEASLEY, an individual, and as**  
13 **proxy for the Labor and Workforce**  
14 **Development Agency,**

15 **Plaintiff,**

16 **vs.**

17 **NOR CAL FIRE, INC. a corporation;**  
18 **TANNER DAYAK, an individual;**  
19 **and DOES 1-100, inclusive,**

20 **Defendants.**

Case No.:

**INDIVIDUAL AND REPRESENTATIVE  
COMPLAINT FOR**

1. **FAILURE TO PAY OVERTIME**
2. **FAILURE TO COMPENSATE FOR REST PERIODS AND OTHER NON-PRODUCTIVE TIME**
3. **FAILURE TO FURNISH REST PERIODS**
4. **FAILURE TO FURNISH MEAL PERIODS**
5. **FAILURE TO PAY ALL WAGES DUE AND OWING AT END OF EMPLOYMENT**
6. **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
7. **VIOLATION OF LABOR CODE § 2802**
8. **UNFAIR BUSINESS PRACTICES**
9. **LABOR CODE RETALIATION**
10. **PRIVATE ATTORNEYS GENERAL ACT**

**JURY TRIAL DEMANDED**

21  
22 Plaintiff James Beasley brings this individual and representative action against Nor Cal Fire,  
23 Inc., Tanner Dayak and Does 1 through 100, for violations of the California Labor Code and the  
24 Business and Professions Code.

25 **PARTIES**

26 1. James Beasley ("Plaintiff" or "Beasley") was at all times relevant herein employed in  
27 San Joaquin County, California, and was an "employee" as defined by the California Labor Code  
28 ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. Nor Cal Fire, Inc. ("Defendant" or "NCF") is a California corporation which does business in California as a commercial and residential fire sprinkler contractor.

3. Tanner Dayak ("Dayak") is an individual, who Plaintiff is informed and believes is and at all times relevant herein was a resident of San Joaquin County, California

4. At all times relevant herein, NCF has been an "employer" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

5. At all times relevant herein, Dayak was an owner, director, officer and/or managing agent of NCF and is individually liable to Plaintiff under Labor Code section 558.1 for causing the violations of Labor Code sections 203, 226, 226.7 and 2802 alleged herein.

6. NCF, Dayak, and Does 1-100 are collectively referred to as Defendants.

7. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

8. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venture of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

1                                   **JURISDICTION AND VENUE; JURY TRIAL DEMAND**

2           9.       This Court is the proper Court, and this action is properly filed in the Superior Court of  
3 California for the County of San Joaquin because Defendants reside in San Joaquin County and the  
4 wrongful acts complained of occurred in San Joaquin County. Plaintiff hereby demands a jury trial.

5                                   **GENERAL ALLEGATIONS**

6           10.     NCF enters into service contracts with various clients, pursuant to which NCF agrees to  
7 routinely inspect and service fire prevention equipment (such as fire sprinklers, fire suppression  
8 systems, and fire extinguishers) to assist clients in maintaining compliance with applicable safety laws  
9 and regulations.

10          11.     Dayak is the owner and Chief Executive Officer of NCF.

11          12.     Plaintiff was employed by NCF as a Service Technician.

12          13.     More than ninety percent of Plaintiff's job duties as a Service Technician consisted of  
13 inspecting, maintaining, repairing, and certifying already-existing fire equipment, specifically fire  
14 extinguishers, present at NCF's client locations and pursuant to already-extant contracts between NCF  
15 and its clients.

16          14.     Plaintiff's typical day consisted of traveling to client locations and performing  
17 inspections of the fire extinguishers present at each location. The specifics required for inspection of  
18 each extinguisher varied based on whether it was a monthly, annual, or six-year inspection.

19          15.     For example, for monthly and annual fire extinguisher inspections, Plaintiff inspected  
20 the extinguishers for physical damage, ensured that they were in proper working order, which included  
21 checking the reading on the extinguisher gauge and cross-checking that reading with the weight of the  
22 extinguisher and ensuring that the extinguisher pin was properly in place, and certified the  
23 extinguisher's condition.

24          16.     For six-year inspections, Plaintiff performed an inspection of the internal components  
25 of the fire extinguisher, which required Plaintiff to completely disassemble the fire extinguisher,  
26 inspect the internal components, and then reassemble the extinguisher, which was then recertified and  
27 replaced in its original spot on the client's premises.

1           17.     If a fire extinguisher was damaged or otherwise needed to be replaced, Plaintiff would  
2 inform the client of the issue, and the client would then communicate with other employees of NCF  
3 regarding the potential purchase of replacement equipment. At all times relevant herein, any sale of  
4 fire extinguisher equipment was wholly incidental to Plaintiff's primary function of inspecting and  
5 maintaining the client's fire extinguisher equipment.

6           18.     Throughout his employment, Plaintiff was intentionally misclassified by NCR as an  
7 exempt outside salesperson, despite actually being a non-exempt employee entitled to minimum wage  
8 for all hours worked, paid rest breaks, and overtime premium pay. Other NCF employees, current and  
9 former, performed duties similar to Plaintiff's and were also intentionally misclassified as exempt  
10 employees.

11           19.     Early in his employment with NCF, Plaintiff inquired of NCF's owner, Tanner Dayak,  
12 regarding whether he was entitled to overtime and meal breaks. Dayak responded that Plaintiff was an  
13 outside salesperson and was not permitted to take meal breaks, nor was he entitled to overtime. At no  
14 time during Plaintiff's employment did any managing agent of NCF inform Plaintiff otherwise.

15           20.     Plaintiff was not provided with a written commission agreement at any time during his  
16 employment with NCF.

17           21.     NCF did not pay Plaintiff and other similar employees an hourly wage, instead Plaintiff  
18 was paid a "commission" that consisted of a portion of the amount charged to NCF's customers for  
19 Plaintiff's service appointments, less "employee costs," which included amounts attributable to any  
20 equipment provided to the customer during the service call and a "vehicle maintenance fee" per call.

21 See **Exhibit 1**.<sup>1</sup>

22           22.     The amount of the "employee costs" deducted from the basis for Plaintiff's  
23 compensation was inflated above the actual cost to NCF for equipment provided to clients during a  
24 service call, which Plaintiff is informed and believes was a scheme employed by NCF to further  
25 depress the wages paid to Plaintiff and other non-exempt employees.

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27  
28 <sup>1</sup> Exhibits 1-3 are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1           23.     Because Plaintiff's primary function was performing maintenance and inspection  
2 services, and because Plaintiff's pay was based on the amount charged to customers for those services,  
3 Plaintiff's pay, despite being labeled a "commission," was actually a piece rate.

4           24.     Due to the time required to travel to and complete his service calls, Plaintiff was often  
5 required to work in excess of 8 hours per workday, and several times for as much as 12 hours in a  
6 single workday. Plaintiff is informed and believes that other non-exempt NCF employees were  
7 similarly required to work more than eight hours per day and forty hours per week. Nonetheless, NCF  
8 did not pay Plaintiff or other non-exempt NCF employees any overtime premium pay.

9           25.     Plaintiff was also required to attend safety meetings that lasted between one to two  
10 hours at least once a month during his employment with NCF but was not paid for that time. Plaintiff  
11 repeatedly inquired of Dayak and NCF's office manager as to why he was not being paid for this time,  
12 to which they responded that NCF was using "wage averaging."

13           26.     NCF did not pay Plaintiff or other non-exempt employees for rest breaks and non-  
14 productive work periods, including time spent attending safety meetings and time spent preparing his  
15 truck and equipment to perform service calls.

16           27.     Labor Code section 226.2 requires employers to pay employees who are paid by piece  
17 rate separately and hourly for rest breaks and all compensable non-productive time. Further, pursuant  
18 to the holding in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5<sup>th</sup> 98, employees paid by  
19 commission must also be paid separately for rest periods and other non-productive time.

20           28.     Accordingly, because NCF failed to separately pay Plaintiff for rest periods, Plaintiff  
21 was not furnished with paid rest periods as required by law.

22           29.     Further, as NCF explicitly informed Plaintiff that he was not entitled to meal breaks,  
23 NCF failed to furnish Plaintiff with meal breaks as required by law.

24           30.     Plaintiff is informed and believes that pursuant to NCF's uniform policy of  
25 misclassifying employees as outside salespersons, other non-exempt employees also did not receive  
26 rest breaks, meal breaks, or pay for rest breaks and other compensable non-productive time as required  
27 by law.

1           31.     On numerous occasions during Plaintiff's employment with NCF, he complained to  
2 NCF, including to Defendant Dayak, of violations of the Labor Code, specifically that NCF was  
3 deducting its business costs from the basis for his pay. Beginning in early 2019, Plaintiff became  
4 more vocal in his complaints to NCF regarding their violations of the Labor Code.

5           32.     In response to Plaintiff's continued complaints, NCF retaliated against Plaintiff by  
6 cutting the number of work assignments he was provided such that his pay in 2019 dropped from a  
7 prior average of approximately \$50,000 per year to \$35,000 in 2019; by taking away his privileges to  
8 use NCF's work vehicle; and by ultimately unlawfully terminating his employment on or about  
9 November 18, 2019.

10          33.     Plaintiff was not provided with his final paycheck on termination. Instead, on  
11 December 4, 2019, NCF informed Plaintiff by email that they would release his final paycheck only  
12 on condition that he return certain items to NCF.

13          34.     Plaintiff did not receive his final paycheck until December 5, 2019. This final check  
14 did not contain the balance of unpaid overtime, pay for rest periods, pay for compensable non-  
15 productive time, or premium pay for unfurnished meal and rest periods owed to Plaintiff.

16          35.     Prior to the pay period ending with September 6, 2019, none of the wage statements  
17 furnished to Plaintiff showed the number of hours Plaintiff worked or all applicable hourly rates and  
18 the number of hours worked at each rate in violation of Labor Code sections 226(a)(2) and 226(a)(9).  
19 Additionally, because Plaintiff was not paid overtime to which he was entitled and not paid for rest  
20 breaks and compensable non-productive time, the wage statements furnished to Plaintiff failed to  
21 accurately state the gross and net wages earned by Plaintiff in violation of Labor Code sections  
22 226(a)(1) and (a)(5)

23          36.     Beginning with the pay period ending on September 6, 2019, although NCF did not  
24 track Plaintiff's time and still computed his wages by taking the amount billed to each client,  
25 subtracting its "employee costs", and then paying a percentage of that difference to Plaintiff, the wage  
26 statements furnished to Plaintiff stated that Plaintiff worked a certain arbitrary number of hours per  
27 pay period at a rate of \$30 per hour, irrespective of how many hours he actually worked. The  
28

1 difference between that amount and the remaining piece rate paid to Plaintiff was then denoted as a  
2 “Bonus” on his wage statements. See **Exhibit 2**.

3 37. Accordingly, the wage statements furnished to Plaintiff from September 6, 2019 until  
4 his unlawful termination on November 18, 2019, failed to accurately state all hours worked, gross and  
5 net wages earned (as Plaintiff was still not paid overtime premium pay, for rest periods and other  
6 compensable non-productive time), or all applicable rates of pay and the number of hours worked at  
7 each rate, all in violation of Labor Code sections 226(a)(2), (5), and (9).

8 38. None of the wage statements furnished by NCF separately stated the total number of  
9 hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid  
10 for those periods during the pay period; or the total hours of other nonproductive time, the rate of  
11 compensation, and the gross wages paid for that time during the pay period, in violation of the  
12 requirements of Labor Code section 226.2(a)(2).

13 39. NCF was, at all times relevant herein, aware of the requirements of California Labor  
14 Code section 226 and 226.2.

15 40. Neither Plaintiff nor a reasonable person would be able to determine the total hours  
16 worked, gross or net wages earned, or all applicable hourly rates and the number of hours worked at  
17 each rate from the wage statements furnished by NCF without reference to other documents or  
18 information.

19 41. NCF has, at all times relevant herein, furnished wage statements to each of its  
20 California employees pursuant to an established set of policies, procedures and practices.

21 42. Plaintiff has suffered injury as a result of Defendants’ knowing and intentional failure  
22 to comply with California Labor Code section 226(a).

23 43. From at least four years prior to the filing of this action, NCF has adopted and  
24 employed unfair business practices. These unfair business practices include, but are not limited to,  
25 failing to pay overtime wages and failure to pay for rest breaks and other compensable non-productive  
26 time.

27 44. Plaintiff is informed and believes, and thereon alleges, that Dayak made the  
28 determination to misclassify Plaintiff and other employees as outside salespersons, to deny them meal

1 and rest breaks as herein alleged, and to deduct from Plaintiff's and other employees' pay the costs of  
2 doing business, including but not limited to costs of materials and vehicle maintenance fees, and  
3 therefore caused the violations of Labor Code sections 203, 226.7, 1194, and 2802 complained of  
4 herein (i.e., failure to pay overtime, failure to pay all wages at termination, failure to furnish meal and  
5 rest breaks, and failure to reimburse employees for business expenses).

6 45. On July 30, 2020, Plaintiff provided written notice to the Labor and Workforce  
7 Development Agency ("LWDA") and NCF regarding the specific provisions of the Labor Code alleged  
8 to have been violated, including the facts and theories to support those alleged violations. A true and  
9 correct copy of the LWDA Letter is attached hereto as **Exhibit 3** and incorporated herein by reference.

10 46. As of the filing of this Complaint, more than 65 calendar days since Plaintiff's written  
11 notice, the LWDA has not provided written notice that it intends to investigate his allegations.  
12 Accordingly, Plaintiff has satisfied the administrative prerequisites under Labor Code section 2699.3  
13 to bring a civil action to recover civil penalties against NCF, in addition to other remedies, for  
14 violations of the California Labor Code.

15 **FIRST CAUSE OF ACTION**  
16 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, and 1198**  
17 **(Failure to Pay Overtime)**  
**Against All Defendants**

18 47. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
20 allegations of this cause of action.

21 48. Pursuant to California Labor Code section 510, any work in excess of eight hours in  
22 one workday and any work in excess of 40 hours in any one workweek and the first eight hours  
23 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less  
24 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours  
25 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an  
26 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be  
27 compensated at the rate of no less than twice the regular rate of pay of an employee.

1           49. Pursuant to California Labor Code section 1198, the maximum hours of work and  
2 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
3 standard conditions of labor for employees and the employment of any employee for longer hours than  
4 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

5           50. Pursuant to California Labor Code section 1194, any employee receiving less than the  
6 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
7 recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime  
8 compensation due, including interest thereon, reasonable attorney's fees and costs of suit.

9           51. As set forth above, Defendant Dayak was an owner, director, officer, or managing  
10 agent of NCF responsible for the overtime violations set forth above and is personally liable pursuant  
11 to Labor Code section 558.1.

12           52. During the relevant time period, Plaintiff regularly worked overtime.

13           53. During the relevant time period, Defendants intentionally and willfully failed to pay the  
14 overtime wages due to Plaintiff.

15           54. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
16 provided.

17  
18                                   **SECOND CAUSE OF ACTION**  
19                                   **VIOLATION OF LABOR CODE §§ 226.2, 1194, 1197 and IWC WAGE ORDERS**  
20                                   **(Failure to Compensate for Rest Periods and Other Non-Productive Time)**  
21                                   **Against All Defendants**

22           55. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
23 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
24 allegations of this cause of action.

25           56. Labor Code § 226.2 requires employers paying employees by piece rate to separately  
26 and hourly compensate those employees for rest breaks and other compensable non-productive time in  
27 an amount equal to the higher of either their regular rate of pay or the applicable minimum wage.

28           57. California law requires that employees paid by commission also be paid at least  
minimum wage for rest breaks and all compensable non-productive time. *See Vaquero v. Stoneledge*

1 *Furniture LLC* (2017) 9 Cal.App.5<sup>th</sup> 98, 110-111; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App.  
2 4th 864.

3 58. As set forth above, Plaintiff was paid by piece rate but did not receive pay for rest  
4 breaks or other compensable non-productive time such as attending safety meetings or preparing his  
5 vehicle and equipment for making service calls.

6 59. Further, irrespective of whether Plaintiff's compensation is properly considered  
7 commission or piece rate, NCF was required to pay him for rest breaks and compensable non-  
8 productive time but did not.

9 60. As set forth above, Defendant Dayak was an owner, director, officer, or managing  
10 agent of NCF responsible for the violations described above and is personally liable pursuant to Labor  
11 Code section 558.1.

12 61. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
13 provided.

14 **THIRD CAUSE OF ACTION**  
15 **VIOLATION OF LABOR CODE §§ 226.7 and IWC WAGE ORDERS**  
16 **(Failure to Furnish Rest Periods)**  
**Against All Defendants**

17 62. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
19 allegations of this cause of action.

20 63. Labor Code § 226.7 requires employers to provide employees rest periods as mandated  
21 by Order of the Industrial Welfare Commission. It states:

22 a. No employer shall require any employee to work during any meal or rest period  
23 mandated by an applicable order of the Industrial Welfare Commission.

24 b. If an employer fails to provide an employee a meal period or rest period in  
25 accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay  
26 the employee 1 additional hour of pay at the employee's regular rate of compensation for each  
work day that the meal or rest period is not provided.

27 64. The applicable Wage Order(s) provides that every "employer shall authorize and permit  
28 all employees to take rest periods, which insofar as practicable shall be in the middle of each work

1 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten  
2 (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order  
3 further provides that "[i]f an employer fails to provide an employee rest period in accordance with the  
4 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the  
5 employee's regular rate of compensation for each workday that the rest period is not provided."

6 65. As set forth above, during the relevant time period, Defendants did not provide Plaintiff  
7 with paid rest breaks as required by law.

8 66. Plaintiff was not paid any premium wages for missed rest periods as required by Labor  
9 Code section 226.7.

10 67. As set forth above, Defendant Dayak was an owner, director, officer, or managing  
11 agent of NCF responsible for the violations described above and is personally liable pursuant to Labor  
12 Code section 558.1.

13 68. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
14 provided.

15 **FOURTH CAUSE OF ACTION**  
16 **VIOLATION OF LABOR CODE §§ 226.7, 512, and IWC WAGE ORDERS**  
17 **(Failure to Furnish Meal Periods)**  
**Against All Defendants**

18 69. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
20 allegations of this cause of action.

21 70. Labor Code § 512 provides that an employer shall not employ an employee for a work  
22 period of more than five hours per day without providing the employee with a meal period of not less  
23 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,  
24 the meal period may be waived by mutual consent of both the employer and employee. An employer  
25 shall not employ an employee for a work period of more than 10 hours per day without providing the  
26 employee with a second meal period of not less than 30 minutes, except that if the total hours worked  
27 is no more than 12 hours, the second meal period may be waived by mutual consent of the employer  
28 and the employee only if the first meal period was not waived.

71. As set forth above, during the relevant time period, Defendants did not authorize and permit Plaintiff to take meal periods.

72. Plaintiff did not voluntarily waive his right to take any meal periods.

73. Plaintiff was also not paid any premium wages for missed meal periods as required by Labor Code section 226.7.

74. As set forth above, Defendant Dayak was an owner, director, officer, or managing agent of NCF responsible for the violations described above and is personally liable pursuant to Labor Code section 558.1.

75. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE §§ 201, ET SEQ.**  
**(Failure to Pay All Wages Due and Owing at End of Employment)**  
**Against All Defendants**

76. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

77. California Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

78. California Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

79. As set forth above, Plaintiff was not timely paid all of his earned but unpaid wages when his employment with NCF ended on or about November 18, 2019.

80. Not only was Plaintiff not paid any final wages until December 4, 2019, but his final check failed to include the balance of unpaid overtime, compensation for rest periods and other compensable non-productive time, and premium wages for missed meal and rest periods.

1           81.     As set forth above, Defendant Dayak was an owner, director, officer, or managing  
2 agent of NCF responsible for the violations described above and is personally liable pursuant to Labor  
3 Code section 558.1.

4           82.     Wherefore, Plaintiff and other non-exempt employees have been injured as set forth  
5 above and request relief as hereafter provided.

6                                   **SIXTH CAUSE OF ACTION**  
7                                   **VIOLATION OF LABOR CODE §§ 226(a), and 226.2**  
8                                   **(Failure to Furnish Accurate Itemized Wage Statements)**  
                                  **Against Defendants NCR and DOES 1-100**

9           83.     Plaintiff hereby realleges and incorporates by reference each and every allegation set  
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
11 allegations of this cause of action.

12           84.     Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly  
13 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable  
14 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are  
15 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages  
16 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and  
17 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net  
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
19 employee and only the last four digits of his or her social security number or an employee  
20 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all  
21 applicable hourly rates in effect during the pay period and corresponding number of hours worked at  
22 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate  
23 of pay and the total hours worked for each temporary services assignment.”

24           85.     Pursuant to Labor Code section 226.2(a)(2) “The itemized statement required by  
25 subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision,  
26 separately state the following, to which the provisions of Section 226 shall also be applicable:

27                               (A) The total hours of compensable rest and recovery periods, the rate of  
28                               compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

86. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(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 the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

87. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay period or any of the other information required to be provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and address of the employer and iv) the name of the employee and the last four digits of his or her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). "Promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

88. As set forth above, Defendants NCR and Does 1-100 intentionally and willfully failed to furnish accurate itemized wage statements which complied with Labor Code section 226 and 226.2.

89. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

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2  
3 **SEVENTH CAUSE OF ACTION**  
4 **VIOLATION OF LABOR CODE § 2802**  
5 **Against All Defendants**

6 90. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
7 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
8 allegations of this cause of action.

9 91. Pursuant to Labor Code section 2802, “an employer shall indemnify his or her  
10 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
11 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
12 even though unlawful, unless the employee, at the time of obeying the directions, believed them to  
13 be unlawful.”

14 92. As set forth above, Defendants’ deduction of a “vehicle maintenance fee” from the  
15 basis for Plaintiff’s compensation operates as an expenditure incurred by Plaintiff for the benefit of  
16 NCF, and thus Plaintiff is entitled to reimbursement thereof.

17 93. Similarly, Defendants’ deduction of “employee costs” from the basis for Plaintiff’s  
18 compensation represented an unlawful passing on to Plaintiff and other employees the normal cost of  
19 doing business in violation of Labor Code section 2802.

20 94. Wherefore, Plaintiff has been damaged as set forth above and requests relief as  
21 hereafter provided.

22 **EIGHTH CAUSE OF ACTION**  
23 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *et seq.***  
24 **(Unfair Business Practices)**  
25 **Against Defendants NCF and DOES 1-100**

26 95. Plaintiff hereby realleges and incorporates by reference each and every allegation  
27 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
28 allegations of this cause of action.

96. Section 17200 of the California Business and Professions Code prohibits any  
unlawful, unfair, or fraudulent business practices.

1           97.     Section 90.5(a) of the Labor Code states that it is the public policy of California to  
2 enforce vigorously minimum labor standards in order to ensure employees are not required to work  
3 under substandard and unlawful conditions, and to protect employers who comply with the law  
4 from those who attempt to gain competitive advantage at the expense of their workers by failing to  
5 comply with minimum labor standards.

6           98.     From at least four years prior to the filing of this action, through the actions and/or  
7 omissions alleged herein, Defendants have engaged in unfair competition within the meaning of  
8 section 17200 of the California Business and Professions Code. These unfair business practices  
9 included failing to pay overtime wages, failing to pay for rest breaks and other compensable non-  
10 productive time, and unlawfully charging employees for the costs of doing business

11           99.     The harm to Plaintiff and other non-exempt employees of Defendants outweighs the  
12 utility, if any, of Defendants' policies and practices. Therefore, Defendants' actions described  
13 herein constitute an unfair business practice or act within the meaning of section 17200 of the  
14 California Business and Professions Code.

15           100.    Wherefore, Plaintiff and the other non-exempt employees have been injured as set  
16 forth above and request relief as hereafter provided.

17                               **NINTH CAUSE OF ACTION**  
18                               **VIOLATION OF LABOR CODE §§ 98.6 and 1102.5**  
19                               **(Labor Code Retaliation)**  
                                  **Against Defendants NCF and DOES 1-100**

20           101.    Plaintiff hereby realleges and incorporates by reference each and every allegation  
21 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
22 allegations of this cause of action.

23           102.    Labor Code section 1102.5(b) makes it unlawful for an employer to retaliate against an  
24 employee for disclosing information to a government or law enforcement agency, that the employee has  
25 reasonable cause to believe constitutes a violation of state or federal statute.

26           103.    An employer that is a corporation or a limited liability company is liable for, in addition  
27 to all other damages recoverable by the employee, a civil penalty of up to \$10,000 for each violation.  
28 Labor Code § 1102.5(f).

1           104. Labor Code section 98.6 prohibits an employer from discharging, or in any manner  
2 discriminating or retaliating against, any employee or applicant for employment because the employee  
3 has engaged in any protected activity. Labor Code §98.6(a).

4           105. As set forth above, Defendants were Plaintiff's employer for purposes of Labor Code  
5 sections 1102.5 and 98.6, and were prohibited from retaliating against Plaintiff for engaging in  
6 protected activity, specifically, for complaining to Defendants of violations of the Labor Code.

7           106. Nonetheless, as set forth above, Defendants discriminated and retaliated against Plaintiff  
8 for his protected conduct, cutting his work assignments and ultimately terminating his employment, in  
9 violation of Labor Code sections 1102.5 and 98.6.

10          107. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered harm.

11          108. The acts taken toward Plaintiff were carried out by Defendants acting in an  
12 oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby  
13 justifying an award to him of punitive damages.

14          109. Wherefore, Plaintiff seeks relief as set forth below.

15                                   **TENTH CAUSE OF ACTION**  
16                                   **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.**  
17                                   **(Private Attorneys General Act)**  
                                      **Against Defendant NCF**

18          110. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
20 allegations of this cause of action.

21          111. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which  
22 provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor  
23 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on  
24 behalf of himself or herself and other current or former employees pursuant to the procedures outlined  
25 in Labor Code section 2699.3.

26          112. Plaintiff was employed by Defendant and the alleged violations were committed against  
27 him during his time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor  
28 Code section 2699(c). Other current and former employees are also aggrieved employees in that one

1 or more of the alleged violations were also committed against them during their time of employment  
2 with Defendants.

3 113. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action  
4 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one  
5 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two  
6 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

7 114. Pursuant to California Labor Code section 2699(g), an aggrieved employee may  
8 recover the civil penalty on behalf of himself or herself and other current or former employees against  
9 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails  
10 in any such action shall be entitled to an award of reasonable attorney's fees and costs.

11 115. As set forth above, Defendants violated the California Labor Code by, inter alia, failing  
12 to pay overtime, failing to pay for rest breaks and other compensable non-productive time, failing to  
13 furnish rest periods, failing to reimburse employees for reasonable business expenses, failing to timely  
14 pay wages on separation, and failing to furnish accurate itemized wage statements, all in violation of  
15 Labor Code Sections 221, 226(a), 226.2, 226.7, 510, and 2802.

16 116. As set forth above, Plaintiff satisfied the administrative prerequisites to act as proxy for  
17 the LWDA and seek to recover penalties for himself and the other aggrieved employees pursuant to  
18 the PAGA.

19 117. Wherefore, Plaintiff seeks to recover civil penalties pursuant to the PAGA on his behalf  
20 and on behalf of the other aggrieved employees as set forth below.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

23 **As to the First through Ninth Causes of Action:**

- 24 1. That this Court award actual, compensatory, special, and general damages as well as  
25 restitutionary relief to Plaintiff;
- 26 2. That this Court award exemplary damages to Plaintiff;
- 27 3. That this Court award statutory penalties and liquidated damages including, but not  
28 limited to, those available under Labor Code §§ 203, 226(e), 226.7 and 1194.2;

4. That this Court award statutory attorneys' fees and costs, including those available under Labor Code §§ 218.5, 226(e)(1), and 1194, as well as Code of Civil Procedure section 1021.5;
5. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
6. That this Court award such other and further relief as the court deems just and proper.

**As to the Tenth Cause of Action:**

1. For civil penalties, including but not limited to those available under Labor Code §§ 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
4. For such other and further relief as the court deems just and proper.

**DATED:** October 9, 2020

**MAYALL HURLEY P.C.**

By                     /s Vladimir J. Kozina                      
VLADIMIR J. KOZINA  
JOHN P. DANELON  
Attorneys for Plaintiff,  
JAMES BEASLEY

# **Exhibit 1**

# NorCal Fire Employee Commission Summary

Serviceman: Jim

| Invoice #               | Customer Name |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |          |          |
|-------------------------|---------------|-----|----------|-----------|---------------|---------------|-----------------|----------|----------|----------|
| 14265                   | Cranbrook     |     |          | 10/19/18  | \$ 1,104.50   | \$ 285.10     | \$ 819.40       |          |          |          |
| Description             |               | QTY | Cost     | Total     | Description   |               | QTY             |          | Cost     | Total    |
| Vehicle Maintenance Fee |               | 1   | \$ 20.00 | \$ 20.00  |               |               |                 |          |          | \$ -     |
| PWM108                  |               | 44  | \$ 3.80  | \$ 167.20 |               |               |                 |          |          | \$ -     |
| BL106                   |               | 44  | \$ 1.10  | \$ 48.40  |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      | Tax           |               | 1               |          | \$ 49.50 | \$ 49.50 |
| TOTAL                   |               |     |          | \$ 235.60 | TOTAL         |               |                 |          | \$ 49.50 |          |
| Invoice #               | Customer Name |     |          | Date      | Total Invoice | Employee Cost | Commission Base |          | Comments |          |
| 14253                   | 1130 K Street |     |          | 10/18/18  | \$ 957.00     | \$ 281.00     | \$ 676.00       |          |          |          |
| Description             |               | QTY | Cost     | Total     | Description   |               | QTY             |          | Cost     | Total    |
| Vehicle Maintenance Fee |               | 1   | \$ 20.00 | \$ 20.00  |               |               |                 |          |          | \$ -     |
| 5#                      |               | 9   | \$ 29.00 | \$ 261.00 |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      | Tax           |               | 1               |          |          | \$ -     |
| TOTAL                   |               |     |          | \$ 281.00 | TOTAL         |               |                 |          | \$ -     |          |
| Invoice #               | Customer Name |     |          | Date      | Total Invoice | Employee Cost | Commission Base |          | Comments |          |
|                         |               |     |          |           |               | \$ -          | \$ -            |          |          |          |
| Description             |               | QTY | Cost     | Total     | Description   |               | QTY             |          | Cost     | Total    |
| Vehicle Maintenance Fee |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      | Tax           |               | 1               |          |          | \$ -     |
| TOTAL                   |               |     |          | \$ -      | TOTAL         |               |                 |          | \$ -     |          |
| Invoice #               | Customer Name |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |          |          |
|                         |               |     |          |           |               | \$ -          | \$ -            |          |          |          |
| Description             |               | QTY | Cost     | Total     | Description   |               | QTY             |          | Cost     | Total    |
| Vehicle Maintenance Fee |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      | Tax           |               | 1               |          |          | \$ -     |
| TOTAL                   |               |     |          | \$ -      | TOTAL         |               |                 |          | \$ -     |          |
| Invoice #               | Customer Name |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |          |          |
|                         |               |     |          |           |               | \$ -          | \$ -            |          |          |          |
| Description             |               | QTY | Cost     | Total     | Description   |               | QTY             |          | Cost     | Total    |
| Vehicle Maintenance Fee |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      |               |               |                 |          |          | \$ -     |
|                         |               |     |          | \$ -      | Tax           |               | 1               |          |          | \$ -     |
| TOTAL                   |               |     |          | \$ -      | TOTAL         |               |                 |          | \$ -     |          |

## Nor Cal Fire Employee Commission

Serviceman Jim

Date: \_\_\_\_\_  
Commission 0.40

| Invoice # | Date       | Invoice total | Cost     | Commission Base | Commission |
|-----------|------------|---------------|----------|-----------------|------------|
| 14265     | 10/19/18   | \$1,104.50    | \$285.10 | \$819.40        | \$327.76   |
| 14253     | 10/18/2018 | \$957.00      | \$281.00 | \$676.00        | \$270.40   |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| 0         | 1/0/1900   | \$0.00        | \$0.00   | \$0.00          | \$0.00     |
| TOTAL     |            | \$2,061.50    | \$566.10 | \$1,495.40      | \$598.16   |

Company Code R9783N 23880173  
 Loc/Dept 01/5186  
 Number 373924  
 Page 1 of 1  
 Nor Cal Fire Inc  
 22600 N Ripon Rd  
 Ripon, CA 95366

# Earnings Statement



Period Starting: 10/20/2018  
 Period Ending: 10/26/2018  
 Pay Date: 10/26/2018



James L Beasley



| Earnings                    | rate | hours/units | this period        | year to date        |
|-----------------------------|------|-------------|--------------------|---------------------|
| Sick                        |      |             | 0.00               | 552.00              |
| Holiday                     |      |             | 0.00               | 360.00              |
| Misc pay                    |      |             | 0.00               | 439.70              |
| Commission                  |      | 0.00        | 598.16             | 44242.90            |
| <b>Gross Pay</b>            |      |             | <b>\$598.16</b>    | <b>\$45,594.60</b>  |
| <b>Statutory Deductions</b> |      |             |                    |                     |
|                             |      |             | <b>this period</b> | <b>year to date</b> |
| Federal Income              |      |             | -21.27             | 3394.12             |
| Social Security             |      |             | -37.09             | 2826.87             |
| Medicare                    |      |             | -8.67              | 661.12              |
| California State Income     |      |             | -3.10              | 1469.16             |
| California State DI         |      |             | -5.98              | 455.95              |
| <b>Voluntary Deductions</b> |      |             |                    |                     |
|                             |      |             | <b>this period</b> | <b>year to date</b> |
| Loan                        |      |             | 0.00               | 3485.00             |
| <b>Net Pay Adjustments</b>  |      |             |                    |                     |
|                             |      |             | <b>this period</b> | <b>year to date</b> |
| Mileage Reimburse           |      |             | 0.00               | 220.00              |
| <b>Net Pay</b>              |      |             | <b>\$522.05</b>    |                     |

| Other Benefits and Information | this period        | year to date  |
|--------------------------------|--------------------|---------------|
| Sick                           |                    |               |
| - Carry Over                   |                    | 0.00          |
| - Accrued Hours                | 0.00               | 24.00         |
| - Taken Hours                  | 0.00               | 24.00         |
| - Balance                      |                    | 0.00          |
| Vacation                       |                    |               |
| - Carry Over                   |                    | 0.00          |
| - Accrued Hours                | 0.77               | 35.42         |
| - Taken Hours                  | 0.00               | 0.00          |
| - Balance                      |                    | 35.42         |
| <b>Deposits</b>                |                    |               |
| <b>account number</b>          | <b>transit/ABA</b> | <b>amount</b> |
| XXXXXX1337                     | XXXXXXXXXX         | 522.05        |

Your federal taxable wages this period are \$598.16

Nor Cal Fire Inc  
 22600 N Ripon Rd  
 Ripon, CA 95366

Pay Date: 10/26/2018

| Deposited to the account | account number | transit/ABA | amount |
|--------------------------|----------------|-------------|--------|
| Checking DirectDeposit   | XXXXXX1337     | XXXXXXXXXX  | 522.05 |

THIS IS NOT A CHECK

James L Beasley



## **Exhibit 2**

# NorCal Fire Employee Commission Summary

Serviceman: Jim

| Invoice # | Customer Name           |     |          | Date     | Total Invoice | Employee Cost | Commission Base | Comments |
|-----------|-------------------------|-----|----------|----------|---------------|---------------|-----------------|----------|
| 27407     | OJUSD Dist Office       |     |          |          | \$ 55.00      | \$ 5.00       | \$ 50.00        |          |
|           | Description             | QTY | Cost     | Total    | Description   | QTY           | Cost            | Total    |
|           | Vehicle Maintenance Fee | 1   | \$ 5.00  | \$ 5.00  |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     | Tax           |               |                 | \$ -     |
|           | TOTAL                   |     |          | \$ 5.00  | TOTAL         |               |                 | \$ -     |
| Invoice # | Customer Name           |     |          | Date     | Total Invoice | Employee Cost | Commission Base | Comments |
| 27388     | East Stan               |     |          |          | \$ 74.00      | \$ 10.00      | \$ 64.00        |          |
|           | Description             | QTY | Cost     | Total    | Description   | QTY           | Cost            | Total    |
|           | Vehicle Maintenance Fee | 1   | \$ 10.00 | \$ 10.00 |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     | Tax           |               |                 | \$ -     |
|           | TOTAL                   |     |          | \$ 10.00 | TOTAL         |               |                 | \$ -     |
| Invoice # | Customer Name           |     |          | Date     | Total Invoice | Employee Cost | Commission Base | Comments |
| 27389     | Food Service            |     |          |          | \$ 38.50      | \$ 5.00       | \$ 33.50        |          |
|           | Description             | QTY | Cost     | Total    | Description   | QTY           | Cost            | Total    |
|           | Vehicle Maintenance Fee | 1   | \$ 5.00  | \$ 5.00  |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     | Tax           |               |                 | \$ -     |
|           | TOTAL                   |     |          | \$ 5.00  | TOTAL         |               |                 | \$ -     |
| Invoice # | Customer Name           |     |          | Date     | Total Invoice | Employee Cost | Commission Base | Comments |
| 27390     | Oakdale Charter         |     |          |          | \$ 50.50      | \$ 5.00       | \$ 45.50        |          |
|           | Description             | QTY | Cost     | Total    | Description   | QTY           | Cost            | Total    |
|           | Vehicle Maintenance Fee | 1   | \$ 5.00  | \$ 5.00  |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     | Tax           |               |                 | \$ -     |
|           | TOTAL                   |     |          | \$ 5.00  | TOTAL         |               |                 | \$ -     |
| Invoice # | Customer Name           |     |          | Date     | Total Invoice | Employee Cost | Commission Base | Comments |
| 27391     | Oakdale High School     |     |          |          | \$ 770.00     | \$ 20.00      | \$ 750.00       |          |
|           | Description             | QTY | Cost     | Total    | Description   | QTY           | Cost            | Total    |
|           | Vehicle Maintenance Fee | 1   | \$ 20.00 | \$ 20.00 |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     |               |               |                 | \$ -     |
|           |                         |     |          | \$ -     | Tax           |               |                 | \$ -     |
|           | TOTAL                   |     |          | \$ 20.00 | TOTAL         |               |                 | \$ -     |

# Nor Cal Fire Employee Commission

|            |     |
|------------|-----|
| Serviceman | Jim |
|------------|-----|

Date: \_\_\_\_\_

|            |      |
|------------|------|
| Commission | 0.40 |
|------------|------|

| Invoice # | Date     | Invoice total | Cost    | Commission Base | Commission |
|-----------|----------|---------------|---------|-----------------|------------|
| 27407     | 01/00/00 | \$55.00       | \$5.00  | \$50.00         | \$20.00    |
| 27388     | 1/0/1900 | \$74.00       | \$10.00 | \$64.00         | \$25.60    |
| 27389     | 1/0/1900 | \$38.50       | \$5.00  | \$33.50         | \$13.40    |
| 27390     | 1/0/1900 | \$50.50       | \$5.00  | \$45.50         | \$18.20    |
| 27391     | 1/0/1900 | \$770.00      | \$20.00 | \$750.00        | \$300.00   |
| 27392     | 1/0/1900 | \$398.00      | \$20.00 | \$378.00        | \$151.20   |
| 27393     | 1/0/1900 | \$152.50      | \$20.00 | \$132.50        | \$53.00    |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| 0         | 1/0/1900 | \$0.00        | \$0.00  | \$0.00          | \$0.00     |
| TOTAL     |          | \$1,538.50    | \$85.00 | \$1,453.50      | \$581.40   |

Hourly Rate

\$ 30.00                      15.00    \$    450.00

|       |          |
|-------|----------|
| Bonus | \$131.40 |
|-------|----------|

# NorCal Fire Employee Commission Summary

Serviceman: Jim

| Invoice # | Customer Name           |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |
|-----------|-------------------------|-----|----------|-----------|---------------|---------------|-----------------|----------|
| 27486     | Bright View             |     |          | 08/30/19  | \$ 1,659.45   | \$ 556.45     | \$ 1,103.00     |          |
|           | Description             | QTY | Cost     | Total     | Description   | QTY           | Cost            |          |
|           | Vehicle Maintenance Fee | 1   | \$ 20.00 | \$ 20.00  |               |               | \$ -            |          |
|           | 2.5#                    | 10  | \$ 26.00 | \$ 260.00 |               |               | \$ -            |          |
|           | 5#                      | 6   | \$ 29.00 | \$ 174.00 |               |               | \$ -            |          |
|           | 6 year                  | 2   | \$ 1.50  | \$ 3.00   | Tax           | 1             | \$ 99.45        |          |
|           | TOTAL                   |     |          | \$ 457.00 | TOTAL         |               |                 | \$ 99.45 |
| Invoice # | Customer Name           |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |
| 27485     | Bright View Maint       |     |          | 08/30/19  | \$ 608.64     | \$ 200.64     | \$ 408.00       |          |
|           | Description             | QTY | Cost     | Total     | Description   | QTY           | Cost            |          |
|           | Vehicle Maintenance Fee | 1   | \$ 20.00 | \$ 20.00  |               |               | \$ -            |          |
|           | 10#                     | 3   | \$ 49.00 | \$ 147.00 |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           | Tax           | 1             | \$ 33.64        |          |
|           | TOTAL                   |     |          | \$ 167.00 | TOTAL         |               |                 | \$ 33.64 |
| Invoice # | Customer Name           |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |
| 27484     | Cranbrook               |     |          | 08/29/19  | \$ 555.88     | \$ 111.88     | \$ 444.00       |          |
|           | Description             | QTY | Cost     | Total     | Description   | QTY           | Cost            |          |
|           | Vehicle Maintenance Fee | 1   | \$ 20.00 | \$ 20.00  |               |               | \$ -            |          |
|           | 5#                      | 5   | \$ 16.00 | \$ 80.00  |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           | Tax           | 1             | \$ 11.88        |          |
|           | TOTAL                   |     |          | \$ 100.00 | TOTAL         |               |                 | \$ 11.88 |
| Invoice # | Customer Name           |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |
|           |                         |     |          |           |               | \$ -          | \$ -            |          |
|           | Description             | QTY | Cost     | Total     | Description   | QTY           | Cost            |          |
|           | Vehicle Maintenance Fee |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           | Tax           |               | \$ -            |          |
|           | TOTAL                   |     |          | \$ -      | TOTAL         |               |                 | \$ -     |
| Invoice # | Customer Name           |     |          | Date      | Total Invoice | Employee Cost | Commission Base | Comments |
|           |                         |     |          |           |               | \$ -          | \$ -            |          |
|           | Description             | QTY | Cost     | Total     | Description   | QTY           | Cost            |          |
|           | Vehicle Maintenance Fee |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           |               |               | \$ -            |          |
|           |                         |     | \$ -     |           | Tax           |               | \$ -            |          |
|           | TOTAL                   |     |          | \$ -      | TOTAL         |               |                 | \$ -     |

## Nor Cal Fire Employee Commission

Serviceman

Jim

Date:

## Commission

0.40

[illegible]

Hourly Rate

\$ 30.00

20.00 \$ 600.00

## Bonus

\$182.00

Company Code R9783N23880173  
Nor Cal Fire Inc  
22600 N Ripon Rd  
Ripon, CA 95366

Loc/Dept 0175186  
Number 930656  
Page 1 of 1

## Earnings Statement



Period Starting: 08/31/2019  
Period Ending: 09/06/2019  
Pay Date: 09/06/2019



James L Beasley



| Earnings                    | rate    | hours/units | this period        | year to date        |
|-----------------------------|---------|-------------|--------------------|---------------------|
| Regular                     | 30.0000 | 20.00       | 600.00             | 1050.00             |
| Vacation                    |         |             | 0.00               | 360.00              |
| Sick                        |         |             | 0.00               | 360.00              |
| Holiday                     |         |             | 0.00               | 240.00              |
| Bonus                       |         | 0.00        | 182.00             | 313.40              |
| Commission                  |         |             | 0.00               | 26944.22            |
| <b>Gross Pay</b>            |         |             | <b>\$782.00</b>    | <b>\$29,267.62</b>  |
| <b>Statutory Deductions</b> |         |             |                    |                     |
|                             |         |             | <b>this period</b> | <b>year to date</b> |
| Federal Income              |         |             | -42.57             | 2678.94             |
| Social Security             |         |             | -48.48             | 1814.59             |
| Medicare                    |         |             | -11.34             | 424.38              |
| California State Income     |         |             | -12.14             | 1148.26             |
| California State DI         |         |             | -7.82              | 292.68              |
| <b>Voluntary Deductions</b> |         |             |                    |                     |
|                             |         |             | <b>this period</b> | <b>year to date</b> |
| Loan                        |         |             | 0.00               | 500.00              |
| <b>Net Pay</b>              |         |             | <b>\$659.65</b>    |                     |

| Other Benefits and Information | this period        | year to date  |
|--------------------------------|--------------------|---------------|
| Sick                           |                    |               |
| - Carry Over                   |                    | 0.00          |
| - Accrued Hours                | 0.00               | 24.00         |
| - Taken Hours                  | 0.00               | 24.00         |
| - Balance                      |                    | 0.00          |
| Vacation                       |                    |               |
| - Carry Over                   |                    | 26.35         |
| - Accrued Hours                | 0.77               | 54.07         |
| - Taken Hours                  | 0.00               | 24.00         |
| - Balance                      |                    | 30.07         |
| Total Hours Worked             | 20.00              | 35.00         |
| <b>Deposits</b>                |                    |               |
| <b>account number</b>          | <b>transit/ABA</b> | <b>amount</b> |
| XXXXXX3413                     | XXXXXXXXXX         | 659.65        |

Your federal taxable wages this period are \$782.00

Nor Cal Fire Inc  
22600 N Ripon Rd  
Ripon, CA 95366

Pay Date: 09/06/2019

| Deposited to the account | account number | transit/ABA | amount |
|--------------------------|----------------|-------------|--------|
| Checking DirectDeposit   | XXXXXX3413     | XXXXXXXXXX  | 659.65 |

THIS IS NOT A CHECK

James L Beasley



Company Code R9783N23880173  
Nor Cal Fire Inc  
22600 N Ripon Rd  
Ripon, CA 95366

Loc/Dept 0175186  
Number 902159  
Page 1 of 1

## Earnings Statement



Period Starting: 08/17/2019  
Period Ending: 08/23/2019  
Pay Date: 08/23/2019



James L Beasley



| Earnings                    | rate    | hours/units | this period        | year to date        |
|-----------------------------|---------|-------------|--------------------|---------------------|
| Regular                     | 30.0000 | 15.00       | 450.00             | 450.00              |
| Vacation                    |         |             | 0.00               | 360.00              |
| Sick                        |         |             | 0.00               | 360.00              |
| Holiday                     |         |             | 0.00               | 240.00              |
| Bonus                       |         | 0.00        | 131.40             | 131.40              |
| Commission                  |         |             | 0.00               | 26944.22            |
| <b>Gross Pay</b>            |         |             | <b>\$581.40</b>    | <b>\$28,485.62</b>  |
| <b>Statutory Deductions</b> |         |             | <b>this period</b> | <b>year to date</b> |
| Federal Income              |         |             | -18.52             | 2636.37             |
| Social Security             |         |             | -36.05             | 1766.11             |
| Medicare                    |         |             | -8.43              | 413.04              |
| California State Income     |         |             | -1.50              | 1136.12             |
| California State DI         |         |             | -5.82              | 284.86              |
| <b>Voluntary Deductions</b> |         |             | <b>this period</b> | <b>year to date</b> |
| Loan                        |         |             | 0.00               | 500.00              |
| <b>Net Pay</b>              |         |             | <b>\$511.08</b>    |                     |

| Other Benefits and Information | this period | year to date |
|--------------------------------|-------------|--------------|
| Sick                           |             |              |
| - Carry Over                   |             | 0.00         |
| - Accrued Hours                | 0.00        | 24.00        |
| - Taken Hours                  | 0.00        | 24.00        |
| - Balance                      |             | 0.00         |
| Vacation                       |             |              |
| - Carry Over                   |             | 26.35        |
| - Accrued Hours                | 0.77        | 52.53        |
| - Taken Hours                  | 0.00        | 24.00        |
| - Balance                      |             | 28.53        |
| Total Hours Worked             | 15.00       | 15.00        |
| <b>Deposits</b>                |             |              |
| account number                 | transit/ABA | amount       |
| XXXXXX3413                     | XXXXXXXXXX  | 511.08       |

Your federal taxable wages this period are \$581.40

Nor Cal Fire Inc  
22600 N Ripon Rd  
Ripon, CA 95366

Pay Date: 08/23/2019

| Deposited to the account | account number | transit/ABA | amount |
|--------------------------|----------------|-------------|--------|
| Checking DirectDeposit   | XXXXXX3413     | XXXXXXXXXX  | 511.08 |

THIS IS NOT A CHECK

James L Beasley



# **Exhibit 3**

LAW OFFICES  
**MAYALL HURLEY**

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE  
450 N. BRAND BLVD., SUITE 600  
GLENDALE, CALIFORNIA 91203  
(818) 646-6440

MAILING ADDRESS:  
2453 GRAND CANAL BLVD.  
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD  
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818  
TELEPHONE (209) 477-3833  
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA  
STEVEN A. MALCOUN  
MARK E. BERRY  
WILLIAM J. GORHAM III  
NICHOLAS F. SCARDIGLI  
ROBERT J. WASSERMAN  
JENNY D. BAYSINGER  
JOHN P. BRISCOE  
VLADIMIR J. KOZINA  
RACHAEL ALLGAIER

OF COUNSEL  
J. ANTHONY ABBOTT

July 30, 2020

**SENT VIA ONLINE FILING (<https://dir.tfaforms.net/266>)**

Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, California 94612

**SENT VIA CERTIFIED MAIL**

Nor Cal Fire, Inc.  
22600 N. Ripon Road  
Ripon, CA 95366

Re: James Beasley

To Whom It May Concern:

This firm represents James Beasley in relation to his prior employment with Nor Cal Fire, Inc. ("Nor Cal Fire"). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Beasley's written notice to the Labor and Workforce Development Agency ("LWDA") and Nor Cal Fire regarding the following violations, and facts and theories supporting the violations, on Mr. Beasley's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Nor Cal Fire.

During the prior year and beyond, Nor Cal Fire has failed to do all of the following with respect to Mr. Beasley and its other current and former non-exempt employees in violation of the California Labor Code:

Mr. Beasley worked for Nor Cal Fire as a non-exempt employee. Nor Cal Fire is a commercial and residential fire sprinkler contractor. Mr. Beasley was paid on a piece-rate basis, which piece rate was determined by the job performed, without regard to the number of hours Mr. Beasley worked in any given workday. Although Mr. Beasley regularly worked in excess of eight hours per day during his employment with Nor Cal Fire, sometimes even working in excess of 12 hours per day, Nor Cal Fire never paid him overtime premium pay, in violation of Labor Code section 510. Mr. Beasley is informed and believes that other current and former employees

Labor and Workforce Development Agency  
Nor Cal Fire, Inc.  
Re: James Beasley  
July 30, 2020  
Page 2 of 3

of Nor Cal Fire were similarly denied overtime premium pay in violation of Labor Code section 510.

Mr. Beasley and other current and former employees of Nor Cal Fire were entitled to, and received, non-discretionary bonuses, commissions, and other items of compensation. However, these non-discretionary bonuses, commissions, and other items of compensation were not factored into the regular rate of pay of Nor Cal Fire's non-exempt employees for purposes of overtime compensation, in violation of Labor Code section 510.

Although he was paid by piece rate, Nor Cal Fire failed to separately pay Mr. Beasley and its other current and former non-exempt employees for rest breaks and other compensable non-productive time in violation of Labor Code section 226.2.

Because Mr. Beasley and other non-exempt employees who earned piece rate were not paid separately for rest periods, Nor Cal Fire failed to furnish paid rest periods to Mr. Beasley and its other non-exempt employees paid by piece rate in violation of Labor Code sections 226.2 and 226.7.

Nor Cal Fire, Inc. also unlawfully charged Mr. Beasley and other employees a "vehicle maintenance fee" each pay period for the use of Nor Cal Fire, Inc.'s own vehicles for business purposes. This practice represents an unlawful shifting of reasonable business expenses from Nor Cal Fire, Inc. to Mr. Beasley and its other current and former employees, in violation of Labor Code section 2802. These deductions also represent unlawful deductions within the meaning of Labor Code section 221 as they constitute a recapture of wages paid to employees.

Because of Nor Cal Fire, Inc.'s failure to pay overtime, failure to separately pay for rest periods and other non-productive time, and unlawful deductions from Mr. Beasley's and its other former employees' wages, Nor Cal Fire Inc. has failed to pay all wages earned and unpaid at termination or resignation, in violation of Labor Code sections 201 and 202.

Additionally, the wage statements furnished to Mr. Beasley and Nor Cal Fire Inc's other current and former non-exempt employees violated Labor Code sections 226(a) and 226.2(a)(2) insofar as they failed to state: 1) all hours worked, 2) all applicable hourly rates and the number of hours worked at each rate, 3) total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and 4) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

Labor and Workforce Development Agency  
Nor Cal Fire, Inc.  
Re: James Beasley  
July 30, 2020  
Page 3 of 3

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Beasley intends to file a civil complaint against Nor Cal Fire pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Regards,

**MAYALL HURLEY P.C.**

By

  
VLADIMIR J. KOZINA

LAW OFFICES  
**MAYALL, HURLEY**  
A PROFESSIONAL CORPORATION  
2453 GRAND CANAL BOULEVARD  
SECOND FLOOR  
STOCKTON, CALIFORNIA 95207-8253

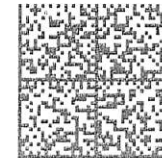


**CERTIFIED MAIL®**



9489 0090 0027 6152 3774 16

Label 890-PB, Oct. 2015  
Pitney Bowes



U.S. POSTAGE»PITNEY BOWES



ZIP 95207 \$ 005.75<sup>0</sup>  
02 4W  
0000369527 JUL 30 2020

Nor Cal Fire, Inc.  
22600 N. Ripon Road  
Ripon, CA 95366



August 1, 2020

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:  
**9489 0090 0027 6152 3774 16.**

#### Item Details

|                            |                                              |
|----------------------------|----------------------------------------------|
| <b>Status:</b>             | Delivered, Left with Individual              |
| <b>Status Date / Time:</b> | August 1, 2020, 11:10 am                     |
| <b>Location:</b>           | RIPON, CA 95366                              |
| <b>Postal Product:</b>     | First-Class Mail®                            |
| <b>Extra Services:</b>     | Certified Mail™<br>Return Receipt Electronic |

#### Shipment Details

|                |             |
|----------------|-------------|
| <b>Weight:</b> | 1lb, 12.2oz |
|----------------|-------------|

#### Recipient Signature

|                         |                                 |
|-------------------------|---------------------------------|
| Signature of Recipient: | CE RI C19<br>Tanner Dayak       |
| Address of Recipient:   | 22600 N Ripon<br>Ripon CA 95366 |

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,  
United States Postal Service®  
475 L'Enfant Plaza SW  
Washington, D.C. 20260-0004