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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ISHMAEL PEREZ, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

CORE & MAIN LP, a Florida limited
partnership; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 5:20-cv-01821

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE
§§ 2698, *ET SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Ishmael Perez, individually and on behalf of all other members of
2 the public similarly situated and as an aggrieved employee and on behalf of all
3 other aggrieved employees, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to Rule 23 of the Federal Rules
6 of Civil Procedure to recover wages and all other available relief on behalf of
7 Plaintiff and all similarly situated current and former non-exempt, hourly paid
8 employees of Defendants, and a non-class representative enforcement action
9 brought pursuant to the Labor Code Private Attorneys General Act of 2004,
10 California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
11 and any other available relief on behalf of Plaintiff, the State of California, and
12 other current and former employees who worked for Defendants in California as
13 non-exempt, hourly paid employees and received at least one wage statement and
14 against whom one or more violations of any provision in Division 2 Part 2
15 Chapter 1 of the Labor Code or any provision regulating hours and days of work
16 in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
17 committed, as set forth in this complaint.

18 2. This Court has original jurisdiction over this action pursuant to 28
19 U.S.C. § 1332(d) and based on 28 U.S.C. §§ 1441, 1446.

20 3. Venue is proper in this Court because this case was originally filed in
21 the Superior Court of California for the County of San Bernardino. Venue
22 properly lies in the United States District Court for the Central District of
23 California pursuant to 28 U.S.C. §§ 84(a), 1391(b) and 1441(a).

24 4. The PAGA statute authorizes aggrieved employees to sue directly as
25 the proxy of the State of California for civil penalties for violations of various
26 provisions in the California Labor Code.

27 **THE PARTIES**

28 5. Plaintiff Ishmael Perez is a resident of Fresno, in Fresno County,

1 California. Defendants employed Plaintiff as an hourly paid, non-exempt
2 Warehouse Operator from approximately December 2019 to March 2020.
3 Plaintiff worked for Defendants at their location in Fresno, California. During
4 his employment, Plaintiff typically worked eight (8) or more hours per day, and
5 five (5) days per week. Plaintiff's primary job duties included, without
6 limitation, operating a forklift to load and unload trailers, transporting and
7 organizing pipes, and performing other warehouse duties as necessary.

8 6. CORE & MAIN LP was and is, upon information and belief, a
9 Florida limited partnership, and at all times hereinafter mentioned, an employer
10 whose employees are engaged throughout this county, the State of California, or
11 the various states of the United States of America.

12 7. Plaintiff is unaware of the true names or capacities of the
13 Defendants sued herein under the fictitious names DOES 1 through 10, but will
14 seek leave of this Court to amend the complaint and serve such fictitiously
15 named Defendants once their names and capacities become known.

16 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1
17 through 10 were the partners, agents, owners, or managers of CORE & MAIN
18 LP at all relevant times.

19 9. Plaintiff is informed and believes, and thereon alleges, that each and
20 all of the acts and omissions alleged herein was performed by, or is attributable
21 to, CORE & MAIN LP and/or DOES 1 through 10 (collectively, "Defendants" or
22 "CORE & MAIN"), each acting as the agent, employee, alter ego, and/or joint
23 venturer of, or working in concert with, each of the other co-Defendants and was
24 acting within the course and scope of such agency, employment, joint venture, or
25 concerted activity with legal authority to act on the others' behalf. The acts of
26 any and all Defendants were in accordance with, and represent, the official
27 policy of Defendants.

28 10. At all relevant times, Defendants, and each of them, ratified each

1 and every act or omission complained of herein. At all relevant times,
2 Defendants, and each of them, aided and abetted the acts and omissions of each
3 and all the other Defendants in proximately causing the damages herein alleged.

4 11. Plaintiff is informed and believes, and thereon alleges, that each of
5 said Defendants is in some manner intentionally, negligently, or otherwise
6 responsible for the acts, omissions, occurrences, and transactions alleged herein.

7 **GENERAL ALLEGATIONS**

8 12. Defendants are the leading distributor of water, sewer, storm drain,
9 and fire protection products in the United States. Defendants operate at least
10 twenty-two (22) warehouse stores in California. Upon information and belief,
11 Defendants maintain a single, centralized Human Resources (“HR”) department
12 at their company headquarters in St. Louis, Missouri, which is responsible for the
13 recruiting and hiring of new employees, and communicating and implementing
14 Defendants’ company-wide policies, including timekeeping policies and meal
15 and rest period policies, to employees throughout California.

16 13. In particular, Plaintiff and class members, on information and belief,
17 received the same standardized documents and/or written policies. Upon
18 information and belief, the usage of standardized documents and/or written
19 policies, including new-hire documents, indicate that Defendants dictated
20 policies at the corporate level and implemented them company-wide, regardless
21 of their employees’ assigned locations or positions. Upon information and
22 belief, Defendants set forth uniform policies and procedures in several
23 documents provided at an employee’s time of hire.

24 14. Upon information and belief, Defendants maintain a centralized
25 Payroll department at their company headquarters in St. Louis, Missouri, which
26 processes payroll for all non-exempt, hourly paid employees working for
27 Defendants at their various locations and jobsites in California, including
28 Plaintiff and class members. Based upon information and belief, Defendants

1 issue the same formatted wage statements to all non-exempt, hourly paid
2 employees in California, irrespective of their work locations. Upon information
3 and belief, Defendants process payroll for departing employees in the same
4 manner throughout the State of California, regardless of the manner in which
5 each employee's employment ends.

6 15. Defendants continue to employ non-exempt or hourly paid
7 employees in California.

8 16. Plaintiff is informed and believes, and thereon alleges, that at all
9 times herein mentioned, Defendants were advised by skilled lawyers and other
10 professionals, employees and advisors knowledgeable about California labor and
11 wage law, employment and personnel practices, and about the requirements of
12 California law.

13 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff
14 and class members were not paid for all hours worked because all hours worked
15 were not recorded.

16 18. Plaintiff is informed and believes, and thereon alleges, that
17 Defendants knew or should have known that Plaintiff and class members were
18 entitled to receive certain wages for overtime compensation and that they were
19 not receiving certain wages for overtime compensation.

20 19. Plaintiff is informed and believes, and thereon alleges, that
21 Defendants knew or should have known that Plaintiff and class members were
22 entitled to receive at least minimum wages for compensation and that they were
23 not receiving at least minimum wages for work that was required to be done off-
24 the-clock. In violation of the California Labor Code, Plaintiff and class members
25 were not paid at least minimum wages for work done off-the-clock.

26 20. Plaintiff is informed and believes, and thereon alleges, that
27 Defendants knew or should have known that Plaintiff and class members were
28 entitled to meal periods in accordance with the Labor Code or payment of one

1 (1) additional hour of pay at their regular rates of pay when they were not
2 provided with timely, uninterrupted, thirty (30) minute meal periods and that
3 Plaintiff and class members were not provided with all meal periods or payment
4 of one (1) additional hour of pay at their regular rates of pay when they did not
5 receive a timely, uninterrupted, thirty (30) minute meal period.

6 21. Plaintiff is informed and believes, and thereon alleges, that
7 Defendants knew or should have known that Plaintiff and class members were
8 entitled to rest periods in accordance with the Labor Code and applicable IWC
9 Wage Order or payment of one (1) additional hour of pay at their regular rates of
10 pay when they were not authorized and permitted to take a compliant rest period.
11 In violation of the California Labor Code, Plaintiff and class members were not
12 authorized and permitted to take compliant rest periods, nor did Defendants
13 provide Plaintiff and class members with payment of one (1) additional hour of
14 pay at their regular rates of pay when they were not authorized and permitted to
15 take a compliant rest period.

16 22. Plaintiff is informed and believes, and thereon alleges, that
17 Defendants knew or should have known that Plaintiff and class members were
18 entitled to receive complete and accurate wage statements in accordance with
19 California law. In violation of the California Labor Code, Plaintiff and class
20 members were not provided complete and accurate wage statements.

21 23. Plaintiff is informed and believes, and thereon alleges, that
22 Defendants knew or should have known that they had a duty to maintain accurate
23 and complete payroll records in accordance with the Labor Code and applicable
24 IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

25 24. Plaintiff is informed and believes, and thereon alleges, that
26 Defendants knew or should have known that Plaintiff and class members were
27 entitled to timely payment of all wages earned upon termination of employment.
28 In violation of the California Labor Code, Plaintiff and class members did not

1 receive payment of all wages due, including, but not limited to, overtime wages,
2 minimum wages, and/or meal and rest period premiums, within permissible time
3 periods.

4 25. Plaintiff is informed and believes, and thereon alleges, that
5 Defendants knew or should have known that Plaintiff and class members were
6 entitled to timely payment of wages during their employment. In violation of the
7 California Labor Code, Plaintiff and class members did not receive payment of
8 all wages, including, but not limited to, overtime wages, minimum wages, and/or
9 meal and rest period premiums, within permissible time periods.

10 26. Plaintiff is informed and believes, and thereon alleges, that at all
11 times herein mentioned, that Defendants knew or should have known that they
12 had a duty to cover the costs and expenses Plaintiff and class members incurred
13 obtaining mandatory physical examinations and/or drug tests, but willfully,
14 knowingly, and intentionally failed to do so.

15 27. Plaintiff is informed and believes, and thereon alleges, that
16 Defendants knew or should have known that they were prohibited from issuing
17 instruments for the payment of wages that were not payable in cash on demand,
18 without discount and with authorization, but did so, in violation of the California
19 Labor Code.

20 28. Plaintiff is informed and believes, and thereon alleges, that
21 Defendants knew or should have known that Plaintiff and class members were
22 entitled to the portion of wages previously paid and subsequently unlawfully
23 deducted by Defendants.

24 29. Plaintiff is informed and believes, and thereon alleges, that
25 Defendants knew or should have known that Plaintiff and class members were
26 entitled to payment of wages as designated by statute. In violation of the
27 California Labor Code, Defendants secretly paid Plaintiff and class members
28 lower wages that required by statute while purporting to pay them proper wages.

1 30. Plaintiff is informed and believes, and thereon alleges, that
2 Defendants knew or should have known that Plaintiff and class members were
3 entitled to receive full reimbursement for all business-related expenses and costs
4 they incurred during the course and scope of their employment and that they did
5 not receive full reimbursement of applicable business-related expenses and costs
6 incurred.

7 31. Plaintiff is informed and believes, and thereon alleges, that at all
8 times herein mentioned, Defendants knew or should have known that Defendants
9 had a duty to provide Plaintiff and class members with written notice of the
10 material terms of their employment with Defendants as required by the
11 California Wage Theft Prevention Act, but willfully, knowingly, and
12 intentionally failed to do so.

13 32. Plaintiff is informed and believes, and thereon alleges, that at all
14 times herein mentioned, Defendants knew or should have known that they had a
15 duty to provide Plaintiff and class members with safety devices and safeguards
16 to protect their life, safety, and health in the workplace, but willfully, knowingly,
17 and intentionally failed to do so.

18 33. Plaintiff is informed and believes, and thereon alleges, that at all
19 times herein mentioned, Defendants knew or should have known that they had a
20 duty to compensate Plaintiff and class members for all hours worked, and that
21 Defendants had the financial ability to pay such compensation, but willfully,
22 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff
23 and class members that they were properly denied wages, all in order to increase
24 Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 34. At all times herein set forth, PAGA provides that any provision of
27 law under the Labor Code and applicable IWC Wage Order that provides for a
28 civil penalty to be assessed and collected by the LWDA for violations of the

1 California Labor Code and applicable IWC Wage Order may, as an alternative,
2 be recovered by aggrieved employees in a civil action brought on behalf of
3 themselves and other current or former employees pursuant to procedures
4 outlined in California Labor Code section 2699.3.

5 35. PAGA defines an “aggrieved employee” in Labor Code section
6 2699(c) as “any person who was employed by the alleged violator and against
7 whom one or more of the alleged violations was committed.”

8 36. Plaintiff and other current and former employees of Defendants are
9 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are
10 all Defendants’ current or former employees and one or more of the alleged
11 violations were committed against them.

12 37. Pursuant to California Labor Code sections 2699.3 and 2699.5, an
13 aggrieved employee, including Plaintiff, may pursue a civil action arising under
14 PAGA after the following requirements have been met:

- 15 (a) The aggrieved employee or representative shall give written
16 notice by online filing with the LWDA and by certified mail
17 to the employer of the specific provisions of the California
18 Labor Code alleged to have been violated, including the facts
19 and theories to support the alleged violation.
- 20 (b) An aggrieved employee’s notice filed with the LWDA
21 pursuant to 2699.3(a) and any employer response to that
22 notice shall be accompanied by a filing fee of seventy-five
23 dollars (\$75).
- 24 (c) The LWDA shall notify the employer and the aggrieved
25 employee or representative by certified mail that it does not
26 intend to investigate the alleged violation (“LWDA’s Notice”)
27 within sixty (60) calendar days of the postmark date of the
28 aggrieved employee’s notice. Upon receipt of the LWDA

1 Notice, or if no LWDA Notice is provided within sixty-five
2 (65) calendar days of the postmark date of the aggrieved
3 employee's notice, the aggrieved employee may commence a
4 civil action pursuant to California Labor Code section 2699 to
5 recover civil penalties.

6 38. Pursuant to California Labor Code sections 2699.3(c), aggrieved
7 employees, through Plaintiff, may pursue a civil action arising under PAGA for
8 violations of any provision other than those listed in Section 2699.5 after the
9 following requirements have been met:

10 (a) The aggrieved employee or representative shall give written
11 notice by online filing with the LWDA and by certified mail
12 to the employer of the specific provisions of the California
13 Labor Code alleged to have been violated (other than those
14 listed in Section 2699.5), including the facts and theories to
15 support the alleged violation.

16 (b) An aggrieved employee's notice filed with the LWDA
17 pursuant to 2699.3(c) and any employer response to that
18 notice shall be accompanied by a filing fee of seventy-five
19 dollars (\$75).

20 (c) The employer may cure the alleged violation within thirty-
21 three (33) calendar days of the postmark date of the notice
22 sent by the aggrieved employee or representative. The
23 employer shall give written notice within that period of time
24 by certified mail to the aggrieved employee or representative
25 and by online filing with the LWDA if the alleged violation is
26 cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the
28 alleged violation is not cured within the 33-day period, the

1 aggrieved employee may commence a civil action pursuant to
2 Section 2699.

3 39. On July 7, 2020, Plaintiff provided written notice by online filing to
4 the LWDA and by Certified Mail to Defendants of the specific provisions of the
5 California Labor Code alleged to have been violated, including facts and theories
6 to support the alleged violations, in accordance with California Labor Code
7 section 2699.3. Plaintiff's written notice was accompanied with the applicable
8 filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator
9 confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
10 Number LWDA-CM-795909-20. A true and correct copy of Plaintiff's written
11 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

12 40. As of the filing date of this complaint, over 65 days have passed
13 since Plaintiff sent the notice described above to the LWDA, and the LWDA has
14 not responded that it intends to investigate Plaintiff's claims and Defendants
15 have not cured the violations.

16 41. Thus, Plaintiff has satisfied the administrative prerequisites under
17 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties
18 against Defendants for violations of California Labor Code sections 201, 202,
19 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516,
20 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

21 42. Labor Code section 558(a) provides "[a]ny employer or other person
22 acting on behalf of an employer who violates, or causes to be violated, a section
23 of this chapter or any provision regulating hours and days of work in any order
24 of the Industrial Welfare Commission shall be subject to a civil penalty as
25 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
26 employee for each pay period for which the employee was underpaid (2)
27 For each subsequent violation, one hundred dollars (\$100) for each underpaid
28 employee for each pay period for which the employee was underpaid"

1 Labor Code section 558(c) provides “[t]he civil penalties provided for in this
2 section are in addition to any other civil or criminal penalty provided by law.”

3 43. Defendants, at all times relevant to this complaint, were employers
4 or persons acting on behalf of an employer(s) who violated Plaintiff’s and other
5 aggrieved employees’ rights by violating various sections of the California Labor
6 Code as set forth above.

7 44. As set forth below, Defendants have violated numerous provisions
8 of both the Labor Code sections regulating hours and days of work as well as the
9 applicable IWC Wage Order.

10 45. Pursuant to PAGA, and in particular, California Labor Code
11 sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff,
12 acting in the public interest as a private attorney general, seeks assessment and
13 collection of civil penalties for himself, all other aggrieved employees, and the
14 State of California against Defendants for violations of California Labor Code
15 sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510,
16 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401,
17 and 6403.

18 **CLASS ACTION ALLEGATIONS**

19 46. Plaintiff brings this action on his own behalf, as well as on behalf of
20 each and all other persons similarly situated, and thus seeks class certification
21 under Rule 23 of the Federal Rules of Civil Procedure.

22 47. All claims alleged herein arise under California law for which
23 Plaintiff seeks relief authorized by California law.

24 48. Plaintiff’s proposed class consists of and is defined as follows:

25 All persons who worked for Defendants as non-exempt,
26 hourly paid employees in California, within four years
27 prior to the filing of the initial complaint until the date of
trial (“Class”).

28 49. Plaintiff’s proposed subclass consists of and is defined as follows:

1 All persons who worked for Defendants as non-exempt,
2 hourly paid employees in California and who received at
3 least one wage statement within one (1) year prior to the
filing of the initial complaint until the date of trial
("Subclass").

4 50. Members of the Class and Subclass are referred to herein as "class
5 members."

6 51. Plaintiff reserves the right to redefine the Class and Subclass and to
7 add additional subclasses as appropriate based on further investigation,
8 discovery, and specific theories of liability.

9 52. This action is brought and properly may be maintained as a class
10 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)
11 and 23(b)(1), (b)(2), or (b)(3) and satisfies the requirements thereof.

12 53. According to Defendant's removal papers, there are at least 342
13 non-exempt, hourly paid employees working for Defendant across California
14 during the relevant period. Thus, it is reasonable to presume that the members of
15 the class are so numerous that joinder of all members is impracticable. The
16 disposition of their claims in a class action will provide substantial benefits to
17 the parties and the Court.

18 54. Plaintiff's claims are typical of those of the class members, because
19 Plaintiff suffered the violations set forth in this First Amended Complaint.

20 55. Plaintiff will adequately protect the interests of class members.
21 Plaintiff has no interests that are adverse to or conflict with class members and is
22 committed to the vigorous prosecution of this action. To that end, Plaintiff has
23 retained counsel who is competent and experienced in handling class actions on
24 behalf of employees.

25 56. A class action is superior to all other available methods for the fair
26 and efficient adjudication of this controversy since joinder of all members is
27 impracticable. Furthermore, as the amount suffered by individual class members
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1 may be relatively small, the expense and burden of individual litigation make it
2 impossible for members of the Class to individually redress the wrongs done to
3 them. There will be no difficulty in the management of this case as a class
4 action.

5 57. There are common questions of law and fact as to class members
6 that predominate over questions affecting only individual members, including,
7 but not limited to:

- 8 (a) Whether Defendants required Plaintiff and class members to
9 work over eight (8) hours per day, over twelve (12) hours per
10 day, or over forty (40) hours per week and failed to pay all
11 legally required overtime compensation to Plaintiff and class
12 members;
- 13 (b) Whether Defendants failed to pay Plaintiff and class members
14 at least minimum wages for all hours worked;
- 15 (c) Whether Defendants failed to provide Plaintiff and class
16 members with meal periods;
- 17 (d) Whether Defendants failed to authorize and permit Plaintiff
18 and class members to take rest periods;
- 19 (e) Whether Defendants provided Plaintiff and class members
20 with complete and accurate wage statements as required by
21 California Labor Code section 226(a);
- 22 (f) Whether Defendants maintained accurate payroll records as
23 required by California Labor Code section 1174(d);
- 24 (g) Whether Defendants failed to pay earned overtime wages,
25 minimum wages, and/or meal and rest period premiums, due
26 to Plaintiff and class members upon their discharge;
- 27 (h) Whether Defendants failed timely to pay overtime wages,
28 minimum wages, and/or meal and rest period premiums to

1 Plaintiff and class members during their employment;

2 (i) Whether Defendants issued instruments for the payment of
3 wages that were not payable in cash on demand and without
4 discount, in violation of Labor Code sections 212 and 213;

5 (j) Whether Defendants unlawfully deducted a portion of wages
6 previously paid to Plaintiff and class members, in violation of
7 Labor Code sections 221 and 224;

8 (k) Whether Defendants secretly paid Plaintiff and class members
9 lower wages than required by statute while purporting to pay
10 the proper wages, in violation of Labor Code section 223;

11 (l) Whether Defendants failed to pay Plaintiff and class members
12 for the costs of mandatory physical examinations and/or drug
13 testing;

14 (m) Whether Defendants failed to reimburse Plaintiff and class
15 members for necessary and required business-related
16 expenditures and/or losses incurred by them in the scope of
17 their employment;

18 (n) Whether Defendants failed to provide written notice of
19 information material to Plaintiff's and class members'
20 employment with Defendants;

21 (o) Whether Defendants failed to provide Plaintiff and class
22 members with safety devices and safeguards;

23 (p) Whether Defendants engaged in unlawful and unfair business
24 practices in violation of California Business & Professions
25 Code sections 17200, *et seq.*; and

26 (q) The appropriate amount of damages, restitution, or monetary
27 penalties resulting from Defendants' violations of California
28 law.

FIRST CAUSE OF ACTION

**Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime
(Against all Defendants)**

58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

59. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

60. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

62. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

63. California Labor Code section 510 codifies the right to overtime

1 compensation at one and one-half (1½) times the regular rate of pay for hours
2 worked in excess of eight (8) hours in a day or forty (40) hours in a week or for
3 the first eight (8) hours worked on the seventh (7th) day of work, and to overtime
4 compensation at twice the employee's regular rate of pay for hours worked in
5 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
6 the seventh (7th) day of work.

7 64. During the relevant time period, Defendants willfully failed to pay
8 all overtime wages owed to Plaintiff and class members. During the relevant
9 time period, Plaintiff and class members were not paid overtime premiums for all
10 of the hours they worked in excess of eight (8) hours in a day, in excess of
11 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,
12 because all hours worked were not recorded.

13 65. During the relevant time period, Defendants had, and continue to
14 have, a company-wide policy and/or practice of understaffing their worksites,
15 while assigning heavy workloads, resulting in a failure to provide Plaintiff and
16 class members with adequate meal period coverage. As a result of this lack of
17 meal period coverage, Plaintiff and class members were not always afforded
18 uninterrupted 30-minute meal periods during shifts when they were entitled to
19 receive a meal period. For example, Plaintiff would have his meal periods
20 interrupted by Defendants and would be required to assist other employees with
21 loading and unloading trailers or complete other work-related tasks. Thus,
22 Plaintiff and class members missed or had meal periods interrupted in order to
23 complete their assigned workloads. Defendants did not pay Plaintiff and class
24 members for the time they continued to perform tasks during meal periods.

25 66. Also, Defendants had a company-wide practice of failing to adhere
26 to a schedule of meal periods, which further caused Plaintiff and class members
27 to not be relieved of their duties for compliant meal periods. Further, on
28 information and belief, because Defendants frowned upon employees accruing

1 meal period penalties, Defendants pressured Plaintiff and class members to clock
2 out for meal periods and/or adjusted employee time records to reflect compliant
3 meal periods, regardless of whether they had received a compliant meal period,
4 in order to strictly limit meal penalties that Defendants would otherwise owe.
5 For example, Defendants pressured Plaintiff to clock out and continue working
6 through his meal periods two (2) to three (3) times per week in order to complete
7 all of the work-related tasks assigned to him by Defendants. Thus, Plaintiff and
8 class members performed work during unpaid meal periods and received no
9 compensation for this time.

10 67. Defendants knew or should have known that as a result of these
11 company-wide practices and/or policies, Plaintiff and class members were
12 performing assigned duties that were not accounted for during their shifts, and
13 were suffered or permitted to perform work for which they were not paid.
14 Because Plaintiff and class members worked shifts of eight (8) hours a day or
15 more or forty (40) hours a week or more, some of this off-the-clock work
16 qualified for overtime premium pay. Therefore, Plaintiff and class members
17 were not paid overtime wages for all of the overtime hours they actually worked.

18 68. Defendants' failure to pay Plaintiff and class members the balance of
19 overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Pursuant to California Labor
21 Code section 1194, Plaintiff and class members are entitled to recover their
22 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and** 25 **1198—Unpaid Minimum Wages** 26 **(Against all Defendants)**

27 69. Plaintiff incorporates by reference and re-alleges as if fully stated
28 herein each and every allegation set forth above.

1 70. At all relevant times, California Labor Code sections 1182.12, 1194,
2 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by
3 the IWC is the minimum wage to be paid to employees, and the payment of a
4 wage less than the minimum so fixed is unlawful. Compensable work time is
5 defined in Wage Order No. 1 as “the time during which an employee is subject to
6 the control of an employer, and includes all the time the employee is suffered or
7 permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
8 § 11010(2)(G) (defining “Hours Worked”).

9 71. As set forth above, as a result of Defendants’ company-wide policy
10 of understaffing their worksites while assigning heavy workloads, Plaintiff and
11 class members were forced to forego meal periods and/or had their meal periods
12 interrupted by work. In conjunction with understaffing their locations,
13 assignment of a heavy workload, and failing to adhere to a schedule of meal
14 periods, Defendants’ uniform practice of pressuring employees to clock out for
15 meal periods and/or adjusting employee time records to reflect compliant meal
16 periods, regardless of whether they had received a compliant meal period,
17 resulted in Plaintiff and class members performing work off-the-clock during
18 unpaid meal periods to complete their assigned job duties.

19 72. Further, Defendants maintained and implemented a company-wide
20 policy of requiring all employees to travel to a medical facility on their own time
21 and using their own personal vehicles to undergo mandatory physical
22 examinations and/or drug testing. At all times, Defendants were in control of
23 scheduling the date and time for the testing and/or physical examinations,
24 selecting the provider or facility where the testing and/or physical examinations
25 were to take place, and determining the scope of the testing and/or physical
26 examinations. For example, Defendants gave Plaintiff strict instructions to
27 obtain drug testing, and Plaintiff underwent the testing for the sole benefit of
28 Defendants. Plaintiff followed Defendants’ instructions, traveled 16 miles

1 roundtrip (for approximately 30 minutes total) to and from a medical facility
 2 authorized by Defendants in Fresno, California, and spent 15 minutes waiting at
 3 the medical facility and undergoing the requisite testing. However, Defendants
 4 did not compensate Plaintiff and class members for the time they spent traveling
 5 to and from the medical facilities and undergoing the mandatory drug testing
 6 and/or physical examinations.

7 73. Defendants did not pay minimum wages for off-the-clock hours that
 8 Plaintiff and class members worked through that qualified for overtime premium
 9 payment. To the extent that these off-the-clock hours did not qualify for
 10 overtime premium payment, Defendants did not pay at least minimum wages for
 11 those hours worked off-the-clock in violation of California Labor Code sections
 12 1182.12, 1194, 1197, 1197.1, and 1198.

13 74. Defendants' failure to pay Plaintiff and class members minimum
 14 wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
 15 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class
 16 members are entitled to recover liquidated damages in an amount equal to the
 17 wages unlawfully unpaid and interest thereon.

18 **THIRD CAUSE OF ACTION**

19 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal**

20 **Period Violations**

21 **(Against all Defendants)**

22 75. Plaintiff incorporates by reference and re-alleges as if fully stated
 23 herein each and every allegation set forth above.

24 76. At all relevant times herein set forth, California Labor Code section
 25 512(a) provides that an employer may not require, cause, or permit an employee
 26 to work for a period of more than five (5) hours per day without providing the
 27 employee with a meal period of not less than thirty (30) minutes, except that if
 28 the total work period per day of the employee is not more than six (6) hours, the

1 meal period may be waived by mutual consent of both the employer and the
2 employee. Under California law, first meal periods must start after no more than
3 five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042
4 (Cal. 2012).

5 77. At all relevant times herein set forth, California Labor Code sections
6 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee
7 to work during any meal period mandated by an applicable order of the IWC.

8 78. At all relevant times herein set forth, Labor Code sections 226.7 and
9 512(a) and the applicable IWC Wage Order also require employers to provide a
10 second meal period of not less than thirty (30) minutes if an employee works
11 over ten (10) hours per day or to pay an employee one (1) additional hour of pay
12 at the employee's regular rate, except that if the total hours worked is no more
13 than twelve (12) hours, the second meal period may be waived by mutual
14 consent of the employer and the employee only if the first meal period was not
15 waived.

16 79. First, as stated, Defendants had, and continue to have, a company-
17 wide policy and/or practice of understaffing while assigning a heavy workload,
18 which resulted in a lack of meal period coverage and prevented Plaintiff and
19 class members from taking all timely, uninterrupted meal periods to which they
20 were entitled. As a result, Plaintiff and class members were forced to forego
21 meal periods and/or have their meal periods interrupted by work or delayed by
22 work, and were not relieved of all duties for unpaid meal periods, in order to
23 attend to their assigned tasks.

24 80. Second, as stated, Defendants had a practice of failing to adhere to a
25 schedule of meal periods, which further caused Plaintiff and class members to
26 not be relieved of their duties for compliant meal periods. Furthermore, on
27 information and belief, because Defendants frowned upon employees accruing
28 meal period penalties, Defendants' management would adjust Plaintiff's and

1 class members' time records and/or pressured employees to clock out for meal
2 periods to reflect compliant meal periods, regardless of whether they had
3 received a compliant meal period or not, in order to strictly limit meal penalties
4 that would need to be paid by Defendants. For example, Defendants pressured
5 Plaintiff to clock out and continue working through his meal periods two (2) to
6 three (3) times per week in order to complete all of the work-related tasks
7 assigned to him by Defendants.

8 81. As a result of Defendants' practices and/or policies, Plaintiff and
9 class members were forced to work in excess of five (5) hours before taking a
10 meal period and, at times, had their meal periods interrupted, and/or had to forgo
11 their meal periods altogether. For example, twice per month, Plaintiff waited
12 more than five (5) hours into his shift to take a meal period due to his heavy
13 workload. Plaintiff and class members did not sign valid meal period waivers on
14 days that they were entitled to meal periods and were not relieved of all duties.

15 82. Moreover, Defendants engaged in a company-wide practice and/or
16 policy of not paying all meal period premiums owed when compliant meal
17 periods were not provided. Because of Defendants' practices and/or policies,
18 Plaintiff and class members have not received premium pay for all missed, late,
19 and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
20 and class members compliant meal periods in violation of California Labor Code
21 sections 226.7, 512, and 516 and failed to pay the full meal period premiums
22 due.

23 83. Defendants' conduct violates the applicable IWC Wage Order, and
24 California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class
25 members are therefore entitled to recover from Defendants one (1) additional
26 hour of pay at the employee's regular rate of compensation for each work day
27 that the meal period was not provided.

28 //

1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period**

3 **Violations**

4 **(Against all Defendants)**

5 84. Plaintiff incorporates by reference and re-alleges as if fully stated
6 herein each and every allegation set forth above.

7 85. At all relevant times herein set forth, the applicable IWC Wage
8 Order and California Labor Code sections 226.7, 516, and 1198 were applicable
9 to Plaintiff and class members' employment by Defendants.

10 86. At all relevant times, the applicable IWC Wage Order provides that
11 "[e]very employer shall authorize and permit all employees to take rest periods,
12 which insofar as practicable shall be in the middle of each work period" and that
13 the "rest period time shall be based on the total hours worked daily at the rate of
14 ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
15 the total daily work time is less than three and one-half (3½) hours.

16 87. At all relevant times, California Labor Code section 226.7 provides
17 that no employer shall require an employee to work during any rest period
18 mandated by an applicable order of the California IWC. To comply with its
19 obligation to authorize and permit rest periods under California Labor Code
20 section 226.7 and the applicable IWC Wage Order, an employer must "relinquish
21 any control over how employees spend their break time, and relieve their
22 employees of all duties — including the obligation that an employee remain on
23 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security*
24 *Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC
25 Wage Order and California Labor Code section 226.7, Plaintiff and class
26 members are entitled to recover from Defendants one (1) additional hour of pay
27 at their regular rates of pay for each work day that a required rest period was not
28 authorized and permitted.

1 88. During the relevant time period, Defendants regularly failed to
2 authorize and permit Plaintiff and class members to take a ten (10) minute rest
3 period per each four (4) hour period worked or major fraction thereof. As with
4 meal periods, Defendants' policy and/or practice of understaffing and assigning
5 heavy workloads prevented Plaintiff and class members from being relieved of
6 all duty in order to take compliant rest periods. Defendants also failed to
7 schedule rest periods, which, coupled with Defendants' failure to provide
8 adequate rest period coverage, further led to Plaintiff and class members not
9 being authorized and permitted to take rest periods.

10 89. Furthermore, during the relevant time period, Defendants
11 maintained a company-wide on-premises rest period policy, which mandated that
12 Plaintiff and class members remain on Defendants' premises during their rest
13 periods. For example, Defendants verbally told Plaintiff that he could not leave
14 Defendants' premises at any time other than during meal periods. Because
15 Plaintiff and class members were restricted from leaving the premises during rest
16 periods, they were denied the ability to use their rest periods freely for their own
17 purposes. Thus, Defendants effectively maintained control over Plaintiff and
18 class members during rest periods.

19 90. As a result of Defendants' practices and policies, Plaintiff and class
20 members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
21 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to
22 which they were entitled. For example, during the course of his employment,
23 Plaintiff had to forego rest periods altogether.

24 91. Defendants have also engaged in a systematic, company-wide
25 practice and/or policy of not paying rest period premiums owed when rest
26 periods are not authorized and permitted. As a result, Defendants denied
27 Plaintiff and class members rest periods and failed to pay them rest period
28 premium wages due, in violation of Labor Code section 226.7 and the applicable

1 IWC Wage Order.

2 92. Defendants' conduct violates the applicable IWC Wage Order and
3 California Labor Code sections 226.7, 516, and 1198. Plaintiff and class
4 members are therefore entitled to recover from Defendants one (1) additional
5 hour of pay at the employee's regular rate of compensation for each work day
6 that a compliant rest period was not authorized and permitted.

7 **FIFTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-**
9 **Compliant Wage Statements and Failure to Maintain Accurate Payroll**

10 **Records**

11 **(Against all Defendants)**

12 93. Plaintiff incorporates by reference and re-alleges as if fully stated
13 herein each and every allegation set forth above.

14 94. At all relevant times herein set forth, California Labor Code section
15 226(a) provides that every employer shall furnish each of his or her employees
16 an accurate and complete itemized wage statement in writing, including, but not
17 limited to, the name and address of the legal entity that is the employer, the
18 inclusive dates of the pay period, total hours worked, and all applicable rates of
19 pay.

20 95. At all relevant times, Defendants have knowingly and intentionally
21 provided Plaintiff and Subclass members with uniform, incomplete, and
22 inaccurate wage statements. For example, Defendants issued uniform wage
23 statements to Plaintiff and Subclass members that fail to correctly list: gross
24 wages earned; total hours worked; net wages earned; and all applicable hourly
25 rates in effect during the pay period, including overtime rates of pay, and the
26 corresponding number of hours worked at each hourly rate. Specifically,
27 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 96. Because Defendants did not accurately record the time Plaintiff and

1 Subclass members spent working off the clock, Defendants did not list the
2 correct amount of gross wages and net wages earned by Plaintiff and Subclass
3 members in compliance with section 226(a)(1) and 226(a)(5). For the same
4 reason, Defendants failed to accurately list the total number of hours worked by
5 Plaintiff and Subclass members in violation of section 226(a)(2), and failed to
6 list the applicable hourly rates of pay in effect during the pay period and
7 corresponding accurate number of work hours worked at each hourly rate in
8 violation of section 226(a)(9).

9 97. The wage statement deficiencies also include, without limitation,
10 failing to list the number of piece-rate units earned and any applicable piece rate
11 if the employee is paid on a piece-rate basis; failing to list all deductions; failing
12 to list the name of the employee and only the last four digits of his or her social
13 security number or an employee identification number other than a social
14 security number; failing to list the name and address of the legal entity that is the
15 employer; failing to list the inclusive dates of the period for which class
16 members were paid; and/or failing to state all hours worked as a result of not
17 recording or stating hours worked off-the-clock.

18 98. California Labor Code section 1198 provides that the maximum
19 hours of work and the standard conditions of labor shall be those fixed by the
20 Labor Commissioner and as set forth in the applicable IWC Wage Orders.
21 Section 1198 further provides that “[t]he employment of any employees for
22 longer hours than those fixed by the order or under conditions of labor prohibited
23 by the order is unlawful.” Pursuant to the applicable IWC Wage Order,
24 employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the
26 relevant time period, Defendants failed, on a company-wide basis, to keep
27 accurate records of work period and meal period start and stop times for Plaintiff
28 and Subclass members, in violation of section 1198. As stated, Defendants

engaged in a company-wide practice and/or policy of falsifying Plaintiff's and Subclass members' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.

99. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

100. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

102. This cause of action is dependent upon, and wholly derivative of,

1 the overtime wages, minimum wages, and/or meal and rest period premium
2 wages, that were not timely paid to Plaintiff and those class members no longer
3 employed by Defendants upon their termination.

4 103. At all times relevant herein set forth, Labor Code sections 201 and
5 202 provide that if an employer discharges an employee, the wages earned and
6 unpaid at the time of discharge are due and payable immediately, and that if an
7 employee voluntarily leaves his or her employment, his or her wages shall
8 become due and payable not later than seventy-two (72) hours thereafter, unless
9 the employee has given seventy-two (72) hours previous notice of his or her
10 intention to quit, in which case the employee is entitled to his or her wages at the
11 time of quitting.

12 104. Defendants willfully failed to pay Plaintiff and class members who
13 are no longer employed by Defendants the earned and unpaid wages set forth
14 above, including but not limited to, overtime wages, minimum wages, and/or
15 meal and rest period premium wages, either at the time of discharge, or within
16 seventy-two (72) hours of their leaving Defendants' employ.

17 105. Defendants' failure to pay Plaintiff and class members who are no
18 longer employed by Defendants their wages earned and unpaid at the time of
19 discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
20 violates Labor Code sections 201 and 202. Plaintiff and class members are
21 therefore entitled to recover from Defendants the statutory penalty wages for
22 each day they were not paid, at their regular rate of pay, up to a thirty (30) day
23 maximum pursuant to California Labor Code section 203.

24 **SEVENTH CAUSE OF ACTION**

25 **Violation of California Labor Code § 204—Failure to Timely Pay Wages** 26 **During Employment** 27 **(Against all Defendants)**

28 106. Plaintiff incorporates by reference and re-alleges as if fully stated

1 herein each and every allegation set forth above.

2 107. This cause of action is dependent upon, and wholly derivative of,
3 the overtime wages, minimum wages, and/or meal and rest period premium
4 wages, that were not timely paid to Plaintiff and those class members.

5 108. At all times relevant herein set forth, Labor Code section 204
6 provides that all wages earned by any person in any employment between the
7 first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other
8 than those wages due upon termination of an employee, are due and payable
9 between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
10 which the labor was performed.

11 109. At all times relevant herein, Labor Code section 204 provides that
12 all wages earned by any person in any employment between the sixteenth (16th)
13 and the last day, inclusive, of any calendar month, other than those wages due
14 upon termination of an employee, are due and payable between the first (1st) and
15 the tenth (10th) day of the following month.

16 110. At all times relevant herein, Labor Code section 204 provides that
17 all wages earned for labor in excess of the normal work period shall be paid no
18 later than the payday for the next regular payroll period. Alternatively, at all
19 times relevant herein, Labor Code section 204 provides that the requirements of
20 this section are deemed satisfied by the payment of wages for weekly, biweekly,
21 or semimonthly payroll if the wages are paid not more than seven (7) calendar
22 days following the close of the payroll period.

23 111. During the relevant time period, Defendants willfully failed to pay
24 Plaintiff and class members all wages due including, but not limited to, overtime
25 wages, minimum wages, and/or meal and rest period premium wages, within the
26 time periods specified by California Labor Code section 204.

27 112. Defendants' failure to pay Plaintiff and class members all wages due
28 violates Labor Code section 204. Plaintiff and class members are therefore

entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

114. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

115. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal cellular phones and cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Defendants required Plaintiff and class members to download and use an ADP mobile application on their personal cellular phones or other devices, which Plaintiff and class members used to clock in and out of

1 their shifts. As a further example, Plaintiff and class members were also
2 required to use their personal cellular phones to complete their work-related
3 tasks, such as discussing ongoing assignments with Defendants' managers.
4 Plaintiff would spend five (5) minutes per instance speaking with his
5 managers/supervisors on his personal cellular phone. Although Defendants
6 required Plaintiff and class members to utilize their personal cellular phones to
7 carry out their work-related responsibilities, Defendants failed to fully reimburse
8 them for this cost.

9 116. Second, Defendants had a company-wide policy of requiring
10 Plaintiff and class members to travel in their own personal vehicles to obtain
11 mandatory drug testing and/or physical examinations, but did not reimburse them
12 for their travel expenses, including mileage. Defendants maintained and
13 implemented a company-wide policy of requiring all employees to travel to a
14 medical facility on their own time and using their own personal vehicles to
15 undergo mandatory drug testing and/or physical examinations. At all times,
16 Defendants were in control of scheduling the date and time for the testing and/or
17 physical examinations, selecting the provider or facility where the testing and/or
18 physical examinations were to take place, and determining the scope of the
19 testing and/or physical examinations. For example, Defendants gave Plaintiff
20 strict instructions to obtain drug testing, and Plaintiff underwent the testing for
21 the sole benefit of Defendants. Plaintiff followed Defendants' instructions,
22 traveled 16 miles roundtrip in his personal vehicle to a medical facility in Fresno,
23 California, and underwent Defendants' drug testing, but was not reimbursed for
24 his mileage to and from the medical facility. Although Defendants required
25 Plaintiff and class members to undergo drug testing, Defendants never
26 reimbursed them for all of their travel expenses.

27 117. Third, Defendants, on a company-wide basis, required Plaintiff and
28 class members to purchase basic warehouse tools that were necessary for

1 completion of assigned tasks. For example, Plaintiff was required to spend
2 \$10.00 on a box cutter in order to complete his regularly assigned duty of
3 unloading and unboxing shipments. Defendants failed to provide basic
4 warehouse tools to Plaintiff and class members, forcing them to procure their
5 own, and failed to reimburse Plaintiff and class members for the costs of these
6 tools.

7 118. Defendants could have provided Plaintiff and class members with
8 the actual tools for use on the job, such as company phones, company vehicles,
9 and warehouse tools, or Defendants could have reimbursed employees for the
10 costs of their cellular phone, mileage, travel expenses, and tool expenses.
11 Instead, Defendants passed these operating costs off onto Plaintiff and class
12 members. At all relevant times, Plaintiff did not earn at least two (2) times the
13 minimum wage.

14 119. Defendants' company-wide policy and/or practice of passing on
15 their operating costs to Plaintiff and class members violates California Labor
16 Code section 2802. Defendants have intentionally and willfully failed to
17 reimburse Plaintiff and other class members for necessary business-related
18 expenses and costs.

19 120. Plaintiff and class members are entitled to recover from Defendants
20 their business-related expenses incurred during the course and scope of their
21 employment, plus interest.

22 **NINTH CAUSE OF ACTION**

23 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

24 **(Against all Defendants)**

25 121. Plaintiff incorporates by reference and re-alleges as if fully stated
26 herein each and every allegation set forth above.

27 122. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff
28 to recover civil penalties for the violation(s) of the Labor Code sections

1 enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor
2 Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7,
3 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
4 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
5 penalties for violations of those Labor Code sections not found in section 2699.5,
6 including sections 516, 1182.12, 2810.5, 6401, and 6403.

7 123. Defendants' conduct, as alleged herein, violates numerous sections
8 of the California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 510, 1198, and the
10 applicable IWC wage order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with all
12 required overtime pay and failure to properly calculate the
13 overtime rates paid to Plaintiff and other aggrieved
14 employees, as set forth below;
- 15 (b) Violation of Labor Code sections 1182.12, 1194, 1197,
16 1197.1, 1198, and the applicable IWC wage order for
17 Defendants' failure to compensate Plaintiff and other
18 aggrieved employees with at least minimum wages for all
19 hours worked, as alleged herein;
- 20 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and
21 the applicable IWC wage order for Defendants' failure to
22 provide Plaintiff and other aggrieved employees with meal
23 periods, as alleged herein;
- 24 (d) Violation of Labor Code sections 226.7, 516, 1198, and the
25 applicable IWC wage order for Defendants' failure to
26 authorize and permit Plaintiff and other aggrieved employees
27 to take rest periods, as alleged herein;
- 28 (e) Violation of Labor Code sections 226(a), 1198, and the

1 applicable IWC wage order for failure to provide accurate and
2 complete wage statements to Plaintiff and other aggrieved
3 employees, as alleged herein;

4 (f) Violation of Labor Code sections 1174(d), 1198, and the
5 applicable IWC wage order for failure to maintain payroll
6 records as alleged herein;

7 (g) Violation of Labor Code sections 201, 202, and 203 for
8 failure to pay all earned wages upon termination, as alleged
9 herein;

10 (h) Violation of Labor Code section 204 for failure to pay all
11 earned wages during employment, as alleged herein;

12 (i) Violation of Labor Code sections 212 and 213 for issuing
13 instruments for the payment of wages that were not payable in
14 cash on demand, without discount, and with prior
15 authorization as set forth below;

16 (j) Violation of Labor Code sections 221 and 224 for unlawfully
17 deducting a portion of wages previously paid to Plaintiff and
18 other aggrieved employees, as set forth below;

19 (k) Violation of Labor Code section 223 for secretly paying
20 Plaintiff and other aggrieved employees lower wages than
21 required by statute, while purporting to pay the proper wages,
22 as set forth below;

23 (l) Violation of Labor Code section 222.5 for failure to
24 compensate Plaintiff and other aggrieved employees for
25 mandatory physical examinations and/or drug testing as set
26 forth below;

27 (m) Violation of Labor Code section 2802 for failure to reimburse
28 Plaintiff and other aggrieved employees for all business

1 expenses necessarily incurred, as alleged herein;

2 (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for
3 failure to provide written notice of information material to
4 Plaintiff's and other aggrieved employees' employment with
5 Defendants, as set forth below; and

6 (o) Violation of Labor Code sections 6401 and 6403 for failure to
7 provide safety devices and safeguards, such as personal
8 protective equipment, to Plaintiff and other aggrieved
9 employees, as set forth below.

10 124. California Labor Code section 212 prohibits employers from issuing
11 any instruments for the payment of wages unless such instruments are negotiable
12 and payable in cash on demand and without discount, at some established place
13 of business in the state, the name and address of which must appear on the
14 instrument. California Labor Code section 212 further prohibits employers from
15 issuing payment of wages due in the form of any scrip, coupon, cards, or other
16 thing redeemable, in merchandise or purporting to be payable or redeemable
17 otherwise than in money.

18 125. California Labor Code section 213 permits employers to pay
19 employees via direct deposit so long as the employee authorizes payment via
20 direct deposit.

21 126. Under California law, employers are permitted to fulfill their wage
22 payment obligations to employees by using payroll debit cards, but only so long
23 as the employee is given the choice as to whether to accept a payroll debit card
24 as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No.
25 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In
26 *Johnson*, the court stated that the Division of Labor Standards Enforcement
27 ("DLSE") decision deeming payroll debit card program permissible relied
28 heavily on:

1 . . . [T]he fact that the pay programs were optional,
 2 thereby allowing an employee to either participate in the
 3 program or receive his or her pay in some other way,
 4 such as direct deposit. Specifically, the DLSE opined
 5 that “[t]he success of the described procedure, in
 6 practice, will of course require that . . . it is presented as
 7 an *alternative* method for wage payment for which [the
 8 employees’] participation is optional.” The DLSE also
 stated, “[i]t is significant that the program does not
 mandate employee participation in the Money Network
 Service and that it is designed to provide an alternative
 for employees receiving their wage payment. Employees
 are also given the option of having their pay direct
 deposited into an account of their choosing”
 (internal citations omitted).

9 127. In addition, California law only permits employers to utilize payroll
 10 debit card programs if they provide employees with effective access to their
 11 wages without discount. The DLSE has interpreted Labor Code sections 212 and
 12 213 as permitting employer use of payroll debit cards where the following
 13 requirements are satisfied:

14 . . . (1) [T]he “wages [are] payable at some established
 15 place of business in the state and there be at least 30 days
 16 of sufficient funds for payment,”; (2) the employees are
 17 “fully informed of the service and procedures and that it
 18 is represented as an alternative method for wage payment
 for which their participation is optional,”; (3) the
 employees receive “an itemized wage statement,”; and
 (4) “at least one transaction per pay period [is] without
 fee.”

19 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL
 20 6202298 at 3.

21 128. Further, the DLSE notes that the Labor Code manifests:

22 . . . [A] strong public policy that prohibits an employer
 23 (or its agent) from imposing conditions or obstacles
 24 which interfere with or prevent an employee’s (*sic*) from
 25 promptly receiving their due wages *in full*. The
 26 imposition of a fee in order to readily *access* one’s
 27 earned and paid wage under a payroll card program
 28 which is designed to discharge the employer’s wage
 payment obligations could impermissibly interfere with
 an employee’s receipt of page wages by creating a
 financial condition which would have the *effect* of
 reducing or discounting wages because such fee would
 be charged against the same account in which wages are
 deposited.” (Emphases in original)

1 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll
2 service providers “effectively act as *agents* of the client employers in discharging
3 the employer’s wage payment obligations.” *Id.* In a second opinion letter, the
4 DLSE stated that “[w]hile the Labor Code does not purport to regulate the
5 specific arrangements between employers and payroll service providers, both an
6 employer and, under the express language in Labor Code § 212- their *agent*,
7 must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

8 129. During the relevant time period, Defendants had a practice and/or
9 policy of automatically issuing payroll debit cards to departing employees
10 without giving them the option to elect their form of payment for their wages.
11 For example, Plaintiff received his final wages on a payroll debit card without a
12 choice of an alternative method, such as a written check. Instead, Defendants
13 automatically enrolled Plaintiff in their payroll debit card program for the
14 purpose of issuing his final wages to him without prior, voluntary approval from
15 Plaintiff.

16 130. Moreover, under Defendants’ payroll debit program, on information
17 and belief, Plaintiff and other aggrieved employees did not have easy access to
18 the entirety of their wages without incurring a fee. For example, Plaintiff and
19 other aggrieved employees were unable to withdraw their entire wages in at least
20 one transaction without incurring a fee. Specifically, Plaintiff utilized certain in-
21 network ATMs to try to withdraw his wages, but could not obtain the entire
22 amount due to a withdrawal limit of \$300.00 per transaction, and because ATMs
23 only disburse cash in limited denominations and do not dispense exact change.
24 Additionally, Plaintiff also encountered approximately \$3.00 in ATM fees each
25 time he utilized an ATM to withdraw funds from his payroll debit card, which
26 resulted in a discount in his pay. While obtaining a teller-assisted withdrawal
27 may have been another option available to employees under Defendants’ payroll
28 card program, Plaintiff and other aggrieved employees had to abide by the

1 business hours of specific bank chains in the payroll service provider's network,
2 which have limited locations. In sum, Defendants' payroll debit card program
3 presented a number of obstacles and hurdles that combined, made it difficult for
4 Plaintiff and other aggrieved employees to access their entire wages without
5 discount and without delay.

6 131. Thus, Defendants' payroll debit card program was and continues to
7 be unlawful as it does not give departing employees the choice as to whether
8 they would like to receive their final wages on a payroll debit card or via some
9 other payment method and did not give Plaintiff and other aggrieved employees
10 easy access to the entirety of their wages without delay.

11 132. California courts recognize a policy favoring the full and prompt
12 payment of wages to employees. Defendants' payroll card program is
13 inconsistent with this policy. Because Defendants' company-wide payroll debit
14 card program is involuntary and denies aggrieved employees of easy access to
15 the entirety of their wages, the program violates California Labor Code sections
16 212 and 213. Plaintiff and other aggrieved employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
18 and (g).

19 133. At all times relevant herein, California Labor Code section 221
20 provides that it shall be unlawful for any employer to collect or receive from an
21 employee any part of wages theretofore paid by said employer to said employee.
22 California Labor Code section 224 also provides in pertinent part that it is lawful
23 to withhold a portion of the employee's wages if "a deduction is expressly
24 authorized in writing by the employee."

25 134. During the relevant time period, Defendants unlawfully deducted a
26 portion of wages previously paid to Plaintiff and/or other non-party Aggrieved
27 Employees in violations of California Labor Code section 221. On information
28 and belief, Defendants systematically, and on a company-wide basis, provided

1 Plaintiff and other aggrieved employees with payroll debit cards as payment of
2 their final wages. Under Defendants' payroll debit card program, Plaintiff and
3 other aggrieved employees were assessed various fees in connection with their
4 use of the payroll debit cards. For example, Plaintiff and other aggrieved
5 employees were required to pay per-transaction fees, ATM fees, in-person teller
6 fees, and/or other fees to obtain and/or spend their earned and due wages. The
7 fees charged to Plaintiff and other aggrieved employees resulted in a discount of
8 their wages.

9 135. Defendants' payroll debit card program, which resulted in a
10 discount of wages to employees, is tantamount to taking deductions from
11 Plaintiff's and other aggrieved employees' paychecks without their written
12 authorization and therefore constitutes an unlawful deduction of wages, in
13 violation of Labor Code sections 221 and 224. Plaintiff and aggrieved
14 employees are therefore entitled to recover civil penalties pursuant to Labor
15 Code sections 225.5 and/or 2699(a), (f), and (g).

16 136. California Labor Code section 223 makes it unlawful for an
17 employer to secretly pay wages lower than required by statute while purporting
18 to pay legal wages.

19 137. During the relevant time period, Defendants willfully and
20 systematically issued payroll debit cards to Plaintiff and other aggrieved
21 employees. The payroll debit cards discounted the wages of Plaintiff and other
22 aggrieved employees by charging various fees in connection with the use of the
23 payroll debit cards. Defendants' payroll debit card program resulted in the
24 payment of less than statutorily required wages to Plaintiff and other aggrieved
25 employees. In doing so, Defendants acted with the intent to deprive Plaintiff and
26 other aggrieved employees of statutory wages, including, but not limited to,
27 overtime wages, minimum wages, and/or meal and rest period premiums, to
28 which they were entitled to under California law. Thus, Defendants paid

1 Plaintiff and other aggrieved employees lower wages than those they were
2 entitled to while purporting that Plaintiff and other aggrieved employees were
3 properly paid. Plaintiff and other aggrieved employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
5 and (g).

6 138. At all relevant times herein, California Labor Code section 222.5
7 requires employers to pay for the costs an employee incurs for obtaining any
8 medical or physical examination taken.

9 139. During the relevant time period, Defendants implemented, on a
10 company-wide basis, an employer-imposed requirement that Plaintiff and other
11 aggrieved employees undergo a mandatory drug test and/or physical
12 examination, but required them to do so at their own expense. As stated,
13 Defendants had a company-wide policy requiring that all employees travel to a
14 specified medical facility using their own personal vehicles to undergo drug
15 testing and/or physical examinations. At all times, Defendants were in control of
16 scheduling the date and time for the testing and/or physical examinations,
17 selecting the provider/facility where the testing and/or physical examinations
18 were to take place, and determining the scope of the testing and/or physical
19 examinations.

20 140. For example, Plaintiff was instructed by Defendants to travel to a
21 medical facility in Fresno, California, and obtain a drug test. Plaintiff followed
22 Defendants' instructions, traveled to the facility Defendants selected, and
23 underwent the testing. Plaintiff was required to travel approximately 16 miles
24 roundtrip (for approximately 30 minutes total) to and from a medical facility
25 selected by Defendants using his own vehicle, and spent 15 minutes waiting at
26 the medical facility and undergoing the requisite testing.

27 141. However, Defendants did not compensate Plaintiff and other
28 aggrieved employees for the time they spent traveling to and from their drug

1 tests and/or physical examinations, or for the time they spent undergoing the
2 drug testing and/or physical examinations, or reimburse them for the travel
3 expenses they incurred getting to and from the medical facilities. Defendants'
4 policy and/or not paying for all costs Plaintiff and other aggrieved employees
5 incurred obtaining mandatory drug testing and/or physical examinations is in
6 violation of California Labor Code section 222.5. Plaintiff and other aggrieved
7 employees are therefore entitled to recover civil penalties pursuant to Labor
8 Code sections 2699(a), (f), and (g).

9 142. At all relevant times herein, California's Wage Theft Prevention Act
10 was enacted to ensure that employers provide employees with basic information
11 material to their employment relationship at the time of hiring, and to ensure that
12 employees are given written and timely notice of any changes to basic
13 information material to their employment. Codified at California Labor Code
14 section 2810.5, the Wage Theft Prevention Act provides that at the time of
15 hiring, an employer must provide written notice to employees containing basic
16 and material payroll information, including, among other things, the rate(s) of
17 pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
18 commission, or otherwise, including any rates for overtime, the regular payday
19 designated by the employer, and any allowances claims as part of the minimum
20 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

21 143. At all relevant times, on information and belief, Defendants failed,
22 on a company-wide basis, to provide written notice to Plaintiff and other
23 aggrieved employees that lists the requisite information set forth in Labor Code
24 section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other
25 aggrieved employees with written notice of basic information regarding their
26 employment with Defendants is in violation of Labor Code section 2810.5.
27 Plaintiff and other aggrieved employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 144. At all relevant times herein, California Labor Code section 6401
2 provides that employers must furnish and use safety devices and safeguards, and
3 adopt and use practices, means, methods, operations, and processes which are
4 reasonably adequate to render the employment and place of employment safe
5 and healthy. California Labor Code Section 6401 further provides that an
6 employer must do everything reasonably necessary to protect the life, safety, and
7 health of its employees. California Labor Code section 6403(a) requires that
8 employers provide and use safety devices and safeguards reasonably adequate to
9 render the employment and place of employment safe.

10 145. Defendants, on a company-wide basis, failed to provide Plaintiff and
11 other aggrieved employees with personal protective equipment, such as steel-
12 toed boots and safety helmets/hard hats, to keep them safe in the workplace. On
13 information and belief, Defendants failed to provide other employees who
14 performed construction or installations of equipment with safety helmets or hard
15 hats. Despite the fact that Defendants required employees to operate heavy
16 machinery, load and unload large equipment and packaging, and/or perform
17 installations, Defendants failed to provide such reasonably necessary equipment
18 to Plaintiff and other aggrieved employees to keep them safe. Thus, Defendants'
19 failure to provide Plaintiff and other aggrieved employees with safety devices
20 and safeguards for the workplace violates Labor Code sections 6401 and 6403.
21 Plaintiff and other aggrieved employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 **TENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

27 146. Plaintiff incorporates by reference and re-alleges as if fully stated
28 herein each and every allegation set forth above.

1 147. Defendants are “persons” as defined by California Business &
2 Professions Code sections 17201, as they are corporations, firms, partnerships,
3 joint stock companies, and/or associations.

4 148. Defendants’ conduct, as alleged herein, has been, and continues to
5 be, unfair, unlawful and harmful to Plaintiff, class members, and to the general
6 public. Plaintiff has suffered injury in fact and has lost money as a result of
7 Defendants’ unlawful business practices. Plaintiff seeks to enforce important
8 rights affecting the public interest within the meaning of Code of Civil Procedure
9 section 1021.5.

10 149. Defendants’ activities, as alleged herein, are violations of California
11 law, and constitute unlawful business acts and practices in violation of California
12 Business & Professions Code sections 17200, *et seq.*

13 150. A violation of California Business & Professions Code sections
14 17200, *et seq.* may be predicated on the violation of any state or federal law. In
15 the instant case, Defendants’ policies and practices have violated state law in at
16 least the following respects:

- 17 (a) Requiring non-exempt, hourly paid employees, including
18 Plaintiff and class members, to work overtime without paying
19 them proper compensation in violation of California Labor
20 Code sections 510 and 1198 and the applicable IWC Order, as
21 alleged herein;
- 22 (b) Failing to pay at least minimum wage to Plaintiff and class
23 members in violation of California Labor Code sections
24 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable
25 IWC Order, as alleged herein;
- 26 (c) Failing to provide uninterrupted meal periods to Plaintiff and
27 class members in violation of California Labor Code sections
28 226.7, 512(a), 516, 1198, and the applicable IWC Order, as

1 alleged herein;

2 (d) Failing to authorize and permit Plaintiff and class members to
3 take uninterrupted rest periods in violation of California
4 Labor Code sections 226.7, 516, 1198, and the applicable
5 IWC Order, as alleged herein;

6 (e) Failing to provide Plaintiff and class members with accurate
7 wage statements and failing to maintain accurate payroll
8 records in violation of California Labor Code sections 226(a),
9 1174(d), 1198, and the applicable IWC Order, as alleged
10 herein;

11 (f) Failing timely to pay all earned wages to Plaintiff and class
12 members in violation of California Labor Code section 204
13 and the applicable IWC Order, as alleged herein;

14 (g) Issuing instruments to Plaintiff and class members for the
15 payment of wages that were not payable in cash on demand
16 and without discount, in violation of Labor Code sections 212
17 and 213, as set forth below;

18 (h) Collecting or receiving wages already paid from Plaintiff and
19 class members in violation of California Labor Code sections
20 221 and 224, as set forth below;

21 (i) Failing to pay the statutorily designated wage scale in
22 violation of California Labor Code section 223, as set forth
23 below;

24 (j) Failing to pay Plaintiff and class members the costs of
25 mandatory physical examinations and/or drug testing in
26 violation of California Labor Code section 222.5, as set forth
27 below;

28 (k) Failing to reimburse Plaintiff and class members for all

business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein;

(l) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below; and

(m) Failing to provide Plaintiff and class members with safety devices and safeguards in violation of California Labor Code sections 6401 and 6403, as set forth below.

151. At all times relevant herein, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

152. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not

1 mandate employee participation in the Money Network
 2 Service and that it is designed to provide an alternative
 3 for employees receiving their wage payment. Employees
 4 are also given the option of having their pay
 direct deposited into an account of their choosing”
 (internal citations omitted).

5 153. In addition, California law only permits employers to utilize payroll
 6 debit card programs if they provide employees with effective access to their
 7 wages without discount. The DLSE has interpreted Labor Code sections 212 and
 8 213 as permitting employer use of payroll debit cards where the following
 9 requirements are satisfied:

10 . . . (1) [T]he “wages [are] payable at some established
 11 place of business in the state and there be at least 30 days
 12 of sufficient funds for payment,”; (2) the employees are
 13 “fully informed of the service and procedures and that it
 14 is represented as an alternative method for wage payment
 for which their participation is optional,”; (3) the
 employees receive “an itemized wage statement,”; and
 (4) “at least one transaction per pay period [is] without
 fee.”

15 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL
 16 6202298 at 3.

17 154. Further, the DLSE notes that the Labor Code manifests:

18 . . . [A] strong public policy that prohibits an employer
 19 (or its agent) from imposing conditions or obstacles
 20 which interfere with or prevent an employee’s (*sic*) from
 promptly receiving their due wages *in full*. The
 21 imposition of a fee in order to readily *access* one’s
 earned and paid wage under a payroll card program
 22 which is designed to discharge the employer’s wage
 payment obligations could impermissibly interfere with
 23 an employee’s receipt of page wages by creating a
 financial condition which would have the *effect* of
 24 reducing or discounting wages because such fee would
 be charged against the same account in which wages are
 deposited.” (Emphases in original)

25 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll
 26 service providers “effectively act as *agents* of the client employers in discharging
 27 the employer’s wage payment obligations.” *Id.* In a second opinion letter, the
 28 DLSE stated that “[w]hile the Labor Code does not purport to regulate the

1 specific arrangements between employers and payroll service providers, both an
2 employer and, under the express language in Labor Code § 212- their *agent*,
3 must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

4 155. During the relevant time period, Defendants had a practice and/or
5 policy of automatically issuing payroll debit cards to departing employees
6 without giving them the option to elect their form of payment for their final
7 wages. For example, Plaintiff received his final wages on a payroll debit card
8 without a choice of an alternate method of payment, such as a written check.
9 Instead, Defendants automatically enrolled Plaintiff in their payroll debit card
10 program for the purpose of issuing his final wages to him without prior,
11 voluntary approval from Plaintiff.

12 156. Moreover, under Defendants’ payroll debit card program, on
13 information and belief, Plaintiff and class members did not have easy access to
14 the entirety of their wages without incurring a fee. For example, Plaintiff and
15 class members were unable to withdraw their entire wages in at least one
16 transaction without incurring a fee. Specifically, Plaintiff utilized certain in-
17 network ATMs to try to withdraw his wages, but could not obtain the entire
18 amount due to a withdrawal limit of \$300.00 per transaction, and because ATMs
19 only disburse cash in limited denominations and do not dispense exact change.
20 Additionally, Plaintiff also encountered approximately \$3.00 in ATM fees each
21 time he utilized an ATM to withdraw funds from his payroll debit card, which
22 resulted in a discount in his pay. While obtaining a teller-assisted withdrawal
23 may have been another option available to employees under Defendants’ payroll
24 card program, Plaintiff and class members had to abide by the business hours of
25 specific bank chains in the payroll service provider’s network, which have
26 limited locations. In sum, Defendants’ payroll debit card program presented a
27 number of obstacles and hurdles that combined, made it difficult for Plaintiff and
28 class members to access their entire wages without discount and without delay.

1 157. Thus, Defendants' payroll debit card program was and continues to
2 be unlawful as it does not give departing employees the choice as to whether
3 they would like to receive their final wages on a payroll debit card or via some
4 other payment method and did not give Plaintiff and class members easy access
5 to the entirety of their wages without delay.

6 158. California courts recognize a policy favoring the full and prompt
7 payment of wages to employees. Defendants' payroll card program is
8 inconsistent with this policy because Defendants' program is involuntary and
9 denies Plaintiff and class members of easy access to the entirety of their wages.
10 Thus, Defendants' company-wide payroll debit card program violates California
11 Labor Code sections 212 and 213.

12 159. At all times relevant herein, California Labor Code section 221
13 provides that it shall be unlawful for any employer to collect or receive from an
14 employee any part of wages theretofore paid by said employer to said employee.
15 California Labor Code section 224 also provides in pertinent part that it is lawful
16 to withhold a portion of the employee's wages if "a deduction is expressly
17 authorized in writing by the employee."

18 160. During the relevant time period, Defendants unlawfully deducted a
19 portion of wages previously paid to Plaintiff and class members in violation of
20 California Labor Code section 221. On information and belief, Defendants
21 systematically, and on a company-wide basis, provided Plaintiff and class
22 members with payroll debit cards as payment of their final wages. Under
23 Defendants' payroll debit card program, Plaintiff and class members were
24 assessed various fees in connection with their use of the payroll debit cards. For
25 example, Plaintiff and class members were required to pay per-transaction fees,
26 ATM fees, and/or other fees to obtain and/or spend their earned and due wages.
27 The fees charged to Plaintiff and class members resulted in a discount of their
28 wages.

1 161. Defendants' payroll debit card program, which resulted in a
2 discount of wages to employees, is tantamount to taking deductions from
3 Plaintiff's and class members' paychecks without their written authorization and
4 therefore constitutes an unlawful deduction of wages, in violation of Labor Code
5 sections 221 and 224.

6 162. At all times, California Labor Code section 223 makes it unlawful
7 for an employer to secretly pay wages lower than required by statute while
8 purporting to pay legal wages.

9 163. During the relevant time period, Defendants willfully and
10 systematically issued payroll debit cards to Plaintiff and class members that
11 discounted their wages by charging various fees in connection with the use of the
12 payroll debit cards. Defendants' payroll debit card program resulted in the
13 payment of less than statutorily required wages to Plaintiff and class members.
14 In doing so, Defendants acted with the intent to deprive Plaintiff and class
15 members of statutory wages, including, but not limited to, overtime wages,
16 minimum wages, and/or meal and rest period premiums, to which they were
17 entitled to under California law. Thus, Defendants paid Plaintiff and class
18 members lower wages than those they were entitled to while purporting that
19 Plaintiff and class members were properly paid.

20 164. Defendants' failure to pay Plaintiff and class members the correct
21 designated wage, while purporting to pay legal wages, is a violation of California
22 Labor Code section 223.

23 165. At all relevant times herein, California Labor Code section 222.5
24 requires employers to pay for the costs an employee incurs for obtaining any
25 medical or physical examination taken.

26 166. At all times relevant herein, Defendants implemented, on a
27 company-wide basis, an employer-imposed requirement that Plaintiff and class
28 members undergo a mandatory drug test and/or physical examination, but

1 required them to do so at their own expense. As stated, Defendants had a
2 company-wide policy requiring that all employees, including Plaintiff and class
3 members, travel to a specified medical facility on their own time and using their
4 own personal vehicles to undergo drug testing and/or physical examinations. At
5 all times, Defendants were in control of scheduling the date and time for the
6 testing and/or physical examinations, selecting the provider/facility where the
7 testing and/or physical examinations were to take place, and determining the
8 scope of the testing and/or physical examinations.

9 167. During the relevant time period, Plaintiff was instructed by
10 Defendants to travel to a medical facility in Fresno, California, and obtain a drug
11 test. Plaintiff followed Defendants' instructions, traveled to the facility
12 Defendants selected, and underwent the testing. Plaintiff was required to travel
13 approximately 16 miles roundtrip (for approximately 30 minutes total) to and
14 from a medical facility selected by Defendants using his own vehicle, and spent
15 15 minutes waiting at the medical facility and undergoing the requisite testing.

16 168. However, Defendants did not compensate Plaintiff and class
17 members for the time they spent traveling to and from their drug tests and/or
18 physical examinations, or for the time they spent undergoing the drug testing
19 and/or physical examinations, or reimburse them for the travel expenses they
20 incurred getting to and from the medical facilities. Defendants' policy and/or not
21 paying for all costs Plaintiff and class members incurred obtaining mandatory
22 drug testing and/or physical examinations is in violation of California Labor
23 Code section 222.5.

24 169. At all relevant times herein, California's Wage Theft Prevention Act
25 was enacted to ensure that employers provide employees with basic information
26 material to their employment relationship at the time of hiring, and to ensure that
27 employees are given written and timely notice of any changes to basic
28 information material to their employment. Codified at California Labor Code

1 section 2810.5, the Wage Theft Prevention Act provides that at the time of
2 hiring, an employer must provide written notice to employees containing basic
3 and material payroll information, including, among other things, the rate(s) of
4 pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
5 commission, or otherwise, including any rates for overtime, the regular payday
6 designated by the employer, and any allowances claims as part of the minimum
7 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

8 170. At all relevant times, on information and belief, Defendants failed,
9 on a company-wide basis, to provide written notice to Plaintiff and class
10 members that lists the requisite information set forth in Labor Code section
11 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members
12 with written notice of basic information regarding their employment with
13 Defendants is in violation of Labor Code section 2810.5.

14 171. At all relevant times herein, California Labor Code section 6401
15 provides that employers must furnish and use safety devices and safeguards, and
16 adopt and use practices, means, methods, operations, and processes which are
17 reasonably adequate to render the employment and place of employment safe
18 and healthy. California Labor Code Section 6401 further provides that an
19 employer must do everything reasonably necessary to protect the life, safety, and
20 health of its employees. California Labor Code section 6403(a) requires that
21 employers provide and use safety devices and safeguards reasonably adequate to
22 render the employment and place of employment safe.

23 172. Defendants, on a company-wide basis, failed to provide Plaintiff and
24 class members with personal protective equipment, such as steel-toed boots and
25 safety helmets/hard hats, to keep them safe in the workplace. On information
26 and belief, Defendants failed to provide other employees who performed
27 construction or installations of equipment with safety helmets or hard hats.
28 Despite the fact that Defendants required employees to operate heavy machinery,

1 load and unload large equipment and packaging, and/or perform installations,
2 Defendants failed to provide such reasonably necessary equipment to Plaintiff
3 and class members to keep them safe. Thus, Defendants' failure to provide
4 Plaintiff and class members with safety devices and safeguards for the workplace
5 violates Labor Code sections 6401 and 6403.

6 173. As a result of the violations of California law herein described,
7 Defendants unlawfully gained an unfair advantage over other businesses.
8 Plaintiff and class members have suffered pecuniary loss by Defendants'
9 unlawful business acts and practices alleged herein.

10 174. Pursuant to California Business & Professions Code sections 17200
11 *et seq.*, Plaintiff and class members are entitled to restitution of the wages
12 withheld and retained by Defendants during a period that commences four years
13 prior to the filing of this complaint; a permanent injunction requiring Defendants
14 to pay all outstanding wages due to Plaintiff and class members; and an award of
15 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5
16 and other applicable laws; and an award of costs.

17 **ELEVENTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –** 19 **Unfair Business Practices** 20 **(Against all Defendants)**

21 175. Plaintiff incorporates by reference and re-alleges as if fully stated
22 herein each and every allegation set forth above.

23 176. Defendants are "persons" as defined by California Business &
24 Professions Code sections 17201, as they are corporations, firms, partnerships,
25 joint stock companies, and/or associations.

26 177. Defendants' conduct, as alleged herein, has been, and continues to
27 be, unfair, and harmful to Plaintiff, class members, and to the general public.
28 Plaintiff has suffered injury in fact and has lost money as a result of Defendants'

1 unfair business practices. Plaintiff seeks to enforce important rights affecting the
2 public interest within the meaning of Code of Civil Procedure section 1021.5.

3 178. Defendants' activities, namely Defendants' company-wide practice
4 and/or policy of not paying Plaintiff and class members all meal and rest period
5 premium wages due to them under Labor Code section 226.7, deprived Plaintiff
6 and class members of the compensation guarantee and enhanced enforcement
7 implemented by section 226.7. The statutory remedy provided by section 226.7
8 is a "'dual-purpose' remedy intended primarily to compensate employees, and
9 secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
10 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
11 guaranteed to Plaintiff and class members as part of their employment with
12 Defendants, and thus Defendants' practice and/or policy of denying these
13 statutory benefits constitutes an unfair business practice in violation of California
14 Business & Professions Code sections 17200, *et seq.* (Id.)

15 179. A violation of California Business & Professions Code sections
16 17200, *et seq.* may be predicated on any unfair business practice. In the instant
17 case, Defendants' policies and practices have violated the spirit of California's
18 meal and rest period laws and constitute acts against the public policy behind
19 these laws.

20 180. Pursuant to California Business & Professions Code sections 17200
21 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide
22 loss of the statutory benefits implemented by section 226.7 withheld and retained
23 by Defendants during a period that commences four years prior to the filing of
24 this complaint; a permanent injunction requiring Defendants to pay all statutory
25 benefits implemented by section 226.7 due to Plaintiff and class members; an
26 award of attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5 and other applicable laws; and an award of costs.

28 //

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of all others similarly situated, prays for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For damages, unpaid wages, penalties, injunctive relief, and
7 attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of
8 interest and costs. Plaintiff reserves the right to amend his prayer for relief to
9 seek a different amount.

10 **Class Certification**

11 2. That this case be certified as a class action;

12 3. That Plaintiff be appointed as the representative of the Class and
13 Subclass;

14 4. That counsel for Plaintiff be appointed as class counsel.

15 **As to the First Cause of Action**

16 5. That the Court declare, adjudge, and decree that Defendants violated
17 California Labor Code sections 510 and 1198 and applicable IWC Wage Orders
18 by willfully failing to pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general
20 and special damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation
22 commencing from the date such amounts were due, or as otherwise provided by
23 law;

24 8. For reasonable attorneys' fees and for costs of suit incurred herein
25 pursuant to California Labor Code section 1194(a); and

26 9. For such other and further relief as the Court may deem equitable
27 and appropriate.

28 //

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure

1 section 1021.5, or as otherwise provided by law; and

2 22. For such other and further relief as the Court may deem equitable
3 and appropriate.

4 **As to the Fourth Cause of Action**

5 23. That the Court declare, adjudge and decree that Defendants violated
6 California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage
7 Orders by willfully failing to authorize and permit Plaintiff and class members to
8 take all rest periods;

9 24. That the Court make an award to the Plaintiff and class members of
10 one (1) hour of pay at each employee's regular rate of pay for each workday that
11 a rest period was not authorized and permitted;

12 25. For all actual, consequential, and incidental losses and damages,
13 according to proof;

14 26. For premiums pursuant to California Labor Code section 226.7(b);

15 27. For pre-judgment interest on any unpaid rest period premiums from
16 the date such amounts were due, or as otherwise provided by law;

17 28. For attorneys' fees pursuant to California Code of Civil Procedure
18 section 1021.5, or as otherwise provided by law; and

19 29. For such other and further relief as the Court may deem equitable
20 and appropriate.

21 **As to the Fifth Cause of Action**

22 30. That the Court declare, adjudge and decree that Defendants violated
23 the recordkeeping provisions of California Labor Code section 226(a) and
24 applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully
25 failed to provide accurate itemized wage statements thereto;

26 31. For all actual, consequential, and incidental losses and damages,
27 according to proof;

28 32. For injunctive relief pursuant to California Labor Code section

1 226(h);

2 33. For statutory penalties pursuant to California Labor Code section
3 226(e);

4 34. For attorneys' fees and costs pursuant to California Labor Code
5 section 226(e)(1); and

6 35. For such other and further relief as the Court may deem equitable
7 and appropriate.

8 **As to the Sixth Cause of Action**

9 36. That the Court declare, adjudge and decree that Defendants violated
10 California Labor Code sections 201 and 202 by willfully failing to pay overtime
11 wages, minimum wages, and/or meal and rest period premiums owed at the time
12 of termination of the employment of Plaintiff and other terminated class
13 members;

14 37. For all actual, consequential and incidental losses and damages,
15 according to proof;

16 38. For waiting time penalties according to proof pursuant to California
17 Labor Code section 203 for all employees who have left Defendants' employ;

18 39. For pre-judgment interest on any unpaid wages from the date such
19 amounts were due, or as otherwise provided by law;

20 40. For attorneys' fees pursuant to California Code of Civil Procedure
21 section 1021.5, or as otherwise provided by law; and

22 41. For such other and further relief as the Court may deem equitable
23 and appropriate.

24 **As to the Seventh Cause of Action**

25 42. That the Court declare, adjudge and decree that Defendants violated
26 California Labor Code section 204 by willfully failing to timely pay Plaintiff and
27 class members overtime wages, minimum wages, and/or meal and rest period
28 premiums during their employment;

1 43. For all actual, consequential and incidental losses and damages,
2 according to proof;

3 44. For statutory penalties according to proof pursuant to California
4 Labor Code section 210;

5 45. For pre-judgment interest on any unpaid wages from the date such
6 amounts were due, or as otherwise provided by law;

7 46. For attorneys' fees pursuant to California Code of Civil Procedure
8 section 1021.5, or as otherwise provided by law; and

9 47. For such other and further relief as the Court may deem equitable
10 and appropriate.

11 **As to the Eighth Cause of Action**

12 48. That the Court declare, adjudge and decree that Defendants violated
13 California Labor Code section 2802 by willfully failing to reimburse and/or
14 indemnify all business-related expenses and costs incurred by Plaintiff and class
15 members;

16 49. For unpaid business-related expenses and such general and special
17 damages as may be appropriate;

18 50. For pre-judgment interest on any unpaid business-related expenses
19 from the date such amounts were due, or as otherwise provided by law;

20 51. For all actual, consequential, and incidental losses and damages,
21 according to proof;

22 52. For attorneys' fees and costs pursuant to California Labor Code
23 section 2802(c), or as otherwise provided by law; and

24 53. For such other and further relief as the Court may deem equitable
25 and appropriate.

26 **As to the Ninth Cause of Action**

27 54. That the Court declare, adjudge and decree that Defendants violated
28 the following California Labor Code provisions as to Plaintiff and/or other

aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide written notice of information material to employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

55. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable

1 and appropriate.

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

3 59. That the Court declare, adjudge and decree that Defendants' conduct
 4 of failing to provide Plaintiff and class members all overtime wages due to them,
 5 failing to provide Plaintiff and class members all minimum wages due to them,
 6 failing to provide Plaintiff and class members all meal periods, failing to
 7 authorize and permit Plaintiff and class members to take all rest periods, failing
 8 to provide Plaintiff and class members accurate and complete wage statements,
 9 failing to maintain accurate payroll records for Plaintiff and class members,
 10 failing timely to pay Plaintiff and class members all earned wages during
 11 employment, failing to provide access to wages without discount, unlawfully
 12 deducting a portion of wages previously paid, secretly paying a lower wage,
 13 failing to reimburse Plaintiff and class members for the costs of mandatory drug
 14 testing and/or physical examinations, failing to reimburse Plaintiff and class
 15 members for business-related expenses, failing to provide written notice of
 16 information material to employment, and failing to provide Plaintiff and class
 17 members with safety devices and safeguards, constitutes an unlawful business
 18 practice in violation of California Business and Professions Code sections 17200,
 19 *et seq.*;

20 60. For restitution of unpaid wages to Plaintiff and all class members
 21 and prejudgment interest from the day such amounts were due and payable;

22 61. For the appointment of a receiver to receive, manage and distribute
 23 any and all funds disgorged from Defendants and determined to have been
 24 wrongfully acquired by Defendants as a result of violations of California
 25 Business & Professions Code sections 17200 *et seq.*;

26 62. For reasonable attorneys' fees and costs of suit incurred herein
 27 pursuant to California Code of Civil Procedure section 1021.5; and

28 63. For such other and further relief as the Court may deem equitable

1 and appropriate.

2 **As to the Eleventh Cause of Action**

3 64. That the Court declare, adjudge and decree that Defendants' conduct
4 of denying Plaintiff and class members the statutory benefits guaranteed under
5 section 226.7 constitutes an unfair business practice in violation of California
6 Business and Professions Code sections 17200, *et seq.*;

7 65. For restitution of the statutory benefits under section 226.7 unfairly
8 withheld from Plaintiff and class members and prejudgment interest from the day
9 such amounts were due and payable;

10 66. For the appointment of a receiver to receive, manage and distribute
11 any and all funds disgorged from Defendants and determined to have been
12 wrongfully acquired by Defendants as a result of violations of California
13 Business & Professions Code sections 17200 *et seq.*;

14 67. For reasonable attorneys' fees and costs of suit incurred herein
15 pursuant to California Code of Civil Procedure section 1021.5;

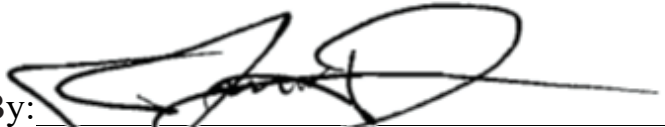
16 68. For pre-judgment and post-judgment interest as provided by law;
17 and

18 69. For such other and further relief as the Court may deem equitable
19 and appropriate.

20
21 Dated: November 5, 2020

Respectfully submitted,

22 Capstone Law APC

23
24 By: 

25 Robert J. Freyler
26 Molly DeSario
Jonathan Lee

27 Attorneys for Plaintiff Ishmael Perez
28