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Attorneys for Plaintiff Adrian Escobedo,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ADRIAN ESCOBEDO, individually, on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

AMERIPEC, INC., a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2020-01170846-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Meal Periods);
- (3) Violation of California Labor Code § 226.7 (Rest Periods);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages);
- (6) Violation of California Labor Code § 226(a) (Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.*;
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

Complaint Filed: November 18, 2020
Trial Date: None Set

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Adrian Escobedo (“Plaintiff”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Orange. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California, County of Orange.

PARTIES

5. Plaintiff Adrian Escobedo is an individual residing in the State of California.

6. Defendant Ameripecc, Inc., a California corporation, at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of Orange.

1 7. At all relevant times, Defendant Ameripec, Inc., were the “employer” of
2 Plaintiff within the meaning of all applicable California laws and statutes.

3 8. At all times herein relevant, Defendant Ameripec, Inc., and DOES 1 through
4 100, and each of them, were the agents, partners, joint venturers, joint employers,
5 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
6 of the other, and at all times relevant hereto were acting within the course and scope of their
7 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
8 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
9 were duly committed with the ratification, knowledge, permission, encouragement,
10 authorization, and consent of each defendant designated herein.

11 9. The true names and capacities, whether corporate, associate, individual or
12 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
13 said defendants by such fictitious names. Plaintiff is informed and believe, and based on that
14 information and belief allege, that each of the Defendants designated as a DOE is legally
15 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
16 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
17 Plaintiff will seek leave of court to amend this Complaint to show the true names and
18 capacities when the same have been ascertained.

19 10. Defendants Ameripec, Inc., and DOES 1 through 100 will hereinafter
20 collectively be referred to as “Defendants.”

21 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
22 affected the working conditions, wages, working hours, and conditions of employment of
23 Plaintiff and the other class members so as to make each of said Defendants employers and
24 employers liable under the statutory provisions set forth herein.

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CLASS ACTION ALLEGATIONS

12. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seek class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current or former non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Defendants, who worked for Defendants within California during the period from August 31, 2016, to March 1, 2022.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than two hundred (200) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing

1 class action discovery, certification, and settlement. Plaintiff has
2 incurred, and during the pendency of this action will continue to incur,
3 costs and attorneys' fees, that have been, are, and will be necessarily
4 expended for the prosecution of this action for the substantial benefit of
5 each class member.

6 d. Superiority: A class action is superior to other available methods for the
7 fair and efficient adjudication of this litigation because individual joinder
8 of all class members is impractical.

9 e. Public Policy Considerations: Certification of this lawsuit as a class
10 action will advance public policy objectives. Employers of this great
11 state violate employment and labor laws every day. Current employees
12 are often afraid to assert their rights out of fear of direct or indirect
13 retaliation. However, class actions provide the class members who are
14 not named in the complaint anonymity that allows for the vindication of
15 their rights.

16 16. There are common questions of law and fact as to the class members that
17 predominate over questions affecting only individual members. The following common
18 questions of law or fact, among others, exist as to the members of the class:

- 19 a. Whether Defendants' failure to pay wages, without abatement or
20 reduction, in accordance with the California Labor Code, was willful;
21 b. Whether Defendants failed to pay their hourly-paid or non-exempt
22 employees within the State of California for all hours worked, missed
23 meal periods and rest breaks in violation of California law;
24 c. Whether Defendants required Plaintiff and the other class members to
25 work over eight (8) hours per day and/or over forty (40) hours per week
26 and failed to pay the legally required overtime compensation to Plaintiff
27 and the other class members;
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- 1 d. Whether Defendants properly calculated the regular rate for Plaintiff and
2 the other class members who worked overtime and earned incentive pay;
3 e. Whether Defendants deprived Plaintiff and the other class members of
4 meal and/or rest periods or required Plaintiff and the other class
5 members to work during meal and/or rest periods without compensation;
6 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
7 other class members for all hours worked;
8 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
9 class members within the required time upon their discharge or
10 resignation;
11 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
12 the other class members during their employment;
13 i. Whether Defendants complied with wage reporting as required by the
14 California Labor Code, including, inter alia, section 226;
15 j. Whether Defendants failed to reimburse Plaintiff and the other class
16 members for necessary business-related expenses and costs;
17 k. Whether Defendants' conduct was willful or reckless;
18 l. Whether Defendants engaged in unfair business practices in violation of
19 California Business & Professions Code section 17200, *et seq.*;
20 m. The appropriate amount of damages, restitution, and/or monetary
21 penalties resulting from Defendants' violation of California law; and
22 n. Whether Plaintiff and the other class members are entitled to
23 compensatory damages pursuant to the California Labor Code.

24 **GENERAL ALLEGATIONS**

25 17. During the relevant time period set forth herein, Defendants employed Plaintiff
26 and other persons as hourly-paid or non-exempt employees within the State of California.

27 18. Defendants, jointly and severally, employed Plaintiff Adrian Escobedo as an
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hourly-paid employee in the State of California, County of Orange.

19. Defendants had the authority to hire and terminate Plaintiff and the other class members; to set work rules and conditions governing Plaintiff and the other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiff is informed and believe, and based thereon allege, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

25. Plaintiff is informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiff and other class members were entitled to receive certain wages for overtime compensation and that Plaintiff and other class members were not receiving wages for overtime compensation.

26. Plaintiff is informed and believe, and based thereon allege, that Defendants failed to provide Plaintiff and other class members the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

27. Plaintiff is informed and believe, and based thereon allege, that Defendants

1 knew or should have known that Plaintiff and other class members were entitled to receive all
2 timely and complete meal periods or payment of one additional hour of pay at Plaintiff and the
3 other class members' regular rates of pay when a meal period was missed, late or interrupted,
4 and that Plaintiff and other class members did not receive all timely and proper meal periods or
5 payment of one additional hour of pay at their regular rates of pay when a meal period was
6 missed.

7 28. Plaintiff is informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Plaintiff and other class members were entitled to receive all
9 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
10 and the other class members' regular rates of pay when a rest period was missed, late or
11 interrupted, and that Plaintiff and other class members did not receive all rest periods or
12 payment of one additional hour of pay at their regular rates of pay when a rest period was
13 missed.

14 29. Plaintiff is informed and believe, and based thereon allege, that Defendants
15 knew or should have known that Plaintiff and other class members were entitled to receive at
16 least minimum wages for compensation and that Plaintiff and other class members were not
17 receiving at least minimum wages for all hours worked.

18 30. Plaintiff is informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiff and other class members were entitled to receive the
20 wages owed to them upon discharge or resignation, including overtime and minimum wages
21 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
22 receive such wages owed to them at the time of their discharge or resignation.

23 31. Plaintiff is informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiff and other class members were entitled to receive
25 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
26 and other class members did not receive complete and accurate wage statements from
27 Defendants. The deficiencies included, inter alia, the failure to include the total number of
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1 hours worked by Plaintiff and other class members.

2 32. Plaintiff is informed and believe, and based thereon allege, that Defendants
3 knew or should have known that Plaintiff and other class members were entitled to
4 reimbursement for necessary business-related expenses.

5 33. Plaintiff is informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Defendants had to keep complete and accurate payroll records
7 for Plaintiff and other class members in accordance with California law, but, in fact, did not
8 keep complete and accurate payroll records for Plaintiff and other class members.

9 34. Plaintiff is informed and believe, and based thereon allege, that Defendants
10 knew or should have known that they had a duty to compensate Plaintiff and other class
11 members pursuant to California law, and that Defendants had the financial ability to pay such
12 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
13 represented to Plaintiff and other class members that they were properly denied wages, all in
14 order to increase Defendants' profits.

15 35. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
17 worked. Plaintiff and other class members were required to work more than eight (8) hours per
18 day and/or forty (40) hours per week without overtime compensation.

19 36. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
21 Plaintiff and other class members.

22 37. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
24 hours worked.

25 38. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
27 discharge or resignation.

39. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and other class members.

41. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

43. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

(Violation of California Labor Code §§ 510 and 1198)

44. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 43, and each and every part thereof, with the same force and effect as though fully set forth herein.

46. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay Plaintiff and other class members employed by Defendants, who
2 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
3 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
4 than forty (40) hours in a workweek.

5 47. The applicable IWC Wage Order further provides that Defendants are and were
6 required to pay Plaintiff and other class members overtime compensation at a rate of two times
7 their regular rates of pay for all hours worked in excess of twelve (12) hours in a day.

8 48. California Labor Code section 510 codifies the right to overtime compensation
9 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
10 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
11 of work, and overtime compensation at twice the regular hourly rate for hours worked in
12 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
13 of work.

14 49. During the relevant time period set forth herein, Plaintiff and other class
15 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
16 week.

17 50. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other
19 class members.

20 51. Defendants' pattern and practice of failing to pay Plaintiff and other class
21 members the unpaid balance of overtime compensation, as required by California laws, violate
22 the provisions of California Labor Code sections 510 and 1198, and are therefore unlawful.

23 52. Pursuant to California Labor Code section 1194, Plaintiff and other class
24 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
25 attorneys' fees.

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1 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
2 consent, were required to work for periods longer than five (5) hours without an uninterrupted
3 meal period of not less than thirty (30) minutes and/or without a rest period.

4 59. As a pattern and practice, during the relevant time period set forth herein,
5 Plaintiff and other class members who were scheduled to work for a period of time no longer
6 than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual
7 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
8 meal period of not less than thirty (30) minutes and/or without a rest period.

9 60. As a pattern and practice, during the relevant time period set forth herein,
10 Plaintiff and other class members who were scheduled to work for a period of time in excess of
11 six (6) hours were required to work for periods longer than five (5) hours without an
12 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

13 61. As a pattern and practice, during the relevant time period set forth herein,
14 Plaintiff and other class members who were scheduled to work for a period of time in excess of
15 twelve (12) hours were required to work for periods longer than ten (10) hours without an
16 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

17 62. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants intentionally and willfully required Plaintiff and other class members to work
19 during meal periods and failed to compensate Plaintiff and the other class members the full
20 meal period premium for work performed during meal periods.

21 63. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay Plaintiff and other class members the full meal period premium due
23 pursuant to California Labor Code section 226.7.

24 64. Defendants' conduct violates applicable IWC Wage Order and California Labor
25 Code sections 226.7 and 512(a).

26 65. Pursuant to the applicable IWC Wage Order and California Labor Code section
27 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
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1 additional hour of pay at the employees' regular rates of compensation for each workday that
2 the meal or rest period is not provided.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of California Labor Code § 226.7)**

5 **(Against AMERIPEC, INC. and DOES 1 through 100)**

6 66. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 65, and each and every part thereof, with the same force and effect as though fully set
8 forth herein.

9 67. During the relevant time period set forth herein, the applicable IWC Wage
10 Order and California Labor Code section 226.7 were applicable to Plaintiff and other class
11 members' employment by Defendants.

12 68. During the relevant time period set forth herein, California Labor Code section
13 226.7 provides that no employer shall require an employee to work during any rest period
14 mandated by an applicable order of the California IWC.

15 69. During the relevant time period set forth herein, the applicable IWC Wage
16 Order provides that "[e]very employer shall authorize and permit all employees to take rest
17 periods, which insofar as practicable shall be in the middle of each work period" and that the
18 "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
19 net rest time per four (4) hours or major fraction thereof" unless the total daily work time is
20 less than three and one-half (3 ½) hours.

21 70. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants required Plaintiff and other class members to work four (4) or more hours without
23 authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

24 71. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants willfully required Plaintiff and other class members to work during rest periods
26 and failed to pay Plaintiff and other class members the full rest period premium for work
27 performed during rest periods.

72. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and other class members the full rest period premium due pursuant to California Labor Code section 226.7.

73. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

74. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular rates of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against AMERIPEC, INC. and DOES 1 through 100)

75. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 74, and each and every part thereof, with the same force and effect as though fully set forth herein.

76. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

77. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and other class members as required pursuant to California Labor Code sections 1194 and 1197.

78. Defendants' pattern and practice of failing to pay Plaintiff and other class members the minimum wage violate California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

79. Pursuant to California Labor Code section 1194.2, Plaintiff and other class

1 members are entitled to recover liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon.

3 **FIFTH CAUSE OF ACTION**

4 **(Violation of California Labor Code §§ 201 and 202)**

5 **(Against AMERIPEC, INC. and DOES 1 through 100)**

6 80. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 79, and each and every part thereof, with the same force and effect as though fully set
8 forth herein.

9 81. During the relevant time period set forth herein, California Labor Code sections
10 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
11 at the time of discharge are due and payable immediately, and if an employee quits his or her
12 employment, his or her wages shall become due and payable not later than seventy-two (72)
13 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
14 intention to quit, in which case the employee is entitled to his or her wages at the time of
15 quitting.

16 82. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants intentionally and willfully failed to pay Plaintiff and other class members who are
18 no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
19 hours of their leaving Defendants' employ.

20 83. Defendants' pattern and practice of failing to pay Plaintiff and other class
21 members who are no longer employed by Defendants their wages, earned and unpaid, within
22 seventy-two (72) hours of their leaving Defendants' employ, violate California Labor Code
23 sections 201 and 202.

24 84. California Labor Code section 203 provides that if an employer willfully fails to
25 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
26 shall continue as a penalty from the due date thereof at the same rate until paid or until an
27 action is commenced; but the wages shall not continue for more than thirty (30) days.

85. Plaintiff and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against AMERIPEC, INC. and DOES 1 through 100)

86. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 85, and each and every part thereof, with the same force and effect as though fully set forth herein.

87. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her Social Security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

88. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to provide Plaintiff and other class members with complete and accurate wage statements. The deficiencies include, but are not limited to, the failure to include the total number of hours worked by Plaintiff and other class members.

1 89. As a result of Defendants' violation of California Labor Code section 226(a),
2 Plaintiff and other class members have suffered injury and damage to their statutorily protected
3 rights.

4 90. More specifically, Plaintiff and other class members have been injured by
5 Defendants' intentional and willful violation of California Labor Code section 226(a) because
6 they were denied both their legal right to receive, and their protected interest in receiving,
7 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

8 91. Plaintiff and other class members are entitled to recover from Defendants the
9 greater of their actual damages caused by Defendants' failure to comply with California Labor
10 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
11 employee.

12 92. Plaintiff and other class members are also entitled to injunctive relief to ensure
13 compliance with this section, pursuant to California Labor Code section 226(g).

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 2800 and 2802)**

16 **(Against AMERIPEC, INC. and DOES 1 through 100)**

17 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 94, and each and every part thereof, with the same force and effect as though fully set
19 forth herein.

20 94. During the relevant time period set forth herein, California Labor Code sections
21 2800 and 2802 provide that an employer must reimburse its employee for all necessary
22 expenditures incurred by the employee in direct consequence of the discharge of his or her job
23 duties or in direct consequence of his or her obedience to the directions of the employer.

24 95. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants intentionally and willfully failed to reimburse Plaintiff and other class members for
26 all necessary business-related expenses and costs.

27 96. Defendant's pattern and practice of failing to reimburse Plaintiff and other class
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1 members for all necessary business-related expenses and costs violate California Labor Code
2 sections 2800 and 2802. Pursuant to those sections, Plaintiff and other class members are
3 entitled to recover from Defendants their business-related expenses and costs incurred during the
4 course and scope of their employment, plus interest accrued from the date on which the
5 employee incurred the necessary expenditures at the same rate as judgments in civil actions in
6 the State of California.

7 **EIGHTH CAUSE OF ACTION**

8 **(Violation of California Labor Code § 2698, *et seq.* (“PAGA”))**

9 **(Against AMERIPEC, INC. and DOES 1 through 100)**

10 97. Plaintiff incorporates by reference the allegations contained in paragraphs 1
11 through 96, and each and every part thereof, with the same force and effect as though fully set
12 forth herein.

13 98. PAGA expressly establishes that any provision of the California Labor Code
14 which provides for a civil penalty to be assessed and collected by the California Labor and
15 Workforce Development Agency (“LWDA”), or any of its departments, divisions,
16 commissions, boards, agencies, or employees for a violation of the California Labor Code, may
17 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
18 herself, and other current or former employees.

19 99. On August 31, 2020, then-plaintiff Todd Martin provided written notice to the
20 LWDA and Defendants of the specific provisions of the Labor Code he contends Defendants
21 violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and
22 incorporated by reference is a copy of the August 31, 2020 written notice to the LWDA.
23 Plaintiff believes that on or about November 4, 2020, the sixty-five (65) days’ notice period
24 expired as to all Defendants, and the LWDA did not take any action to investigate or prosecute
25 this matter. Therefore, Plaintiff exhausted the statutory time period to bring this action. Then-
26 plaintiff Todd Martin then submitted an amended notice to the LWDA on January 6, 2022,
27 adding Plaintiff Adrian Escobedo as additional representative. Attached hereto as **Exhibit 2**
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1 and incorporated by reference is a copy of the January 6, 2022 amended written notice to the
2 LWDA.

3 100. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved
4 employees” as defined by California Labor Code section 2699(c) in that they are all current or
5 former employees (whether hired directly or through a staffing agency or labor contractor) of
6 Defendants who worked for Defendants within the State of California during the period from
7 August 31, 2019, to March 1, 2022, and one or more of the alleged violations was committed
8 against them.

9 **Failure to Pay Minimum and Overtime Wages**

10 101. At all times relevant herein, Defendants were required to compensate their non-
11 exempt employees minimum wages for all hours worked and overtime wages for all hours
12 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
13 mandates of Labor Code sections 510, 1194, 1197, and 1198.

14 102. As a pattern and practice, Defendants failed to compensate Plaintiff and other
15 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
16 minimum wages and overtime wages, where applicable.

17 **Failure to Provide Meal Periods and Rest Breaks**

18 103. At all times relevant herein, Defendants were required to authorize and permit
19 their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or
20 major fraction thereof, and were further required to provide their non-exempt employees with a
21 30-minute meal period for every five (5) hours worked, pursuant to the mandates of Labor
22 Code sections 226.7 and 512.

23 104. As a pattern and practice, Defendants failed to provide Plaintiff and other
24 aggrieved current and former employees with legally mandated meal periods and rest breaks
25 and failed to pay proper compensation for this failure.

26 **Failure to Timely Pay Wages During Employment**

27 105. At all times relevant herein, Defendants were required to pay their employees
28

1 within a specified time period, pursuant to the mandate of Labor Code section 204.

2 106. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved
3 current and former employees all wages due and owing them within the required time period.

4 **Failure to Timely Pay Wages Upon Termination**

5 107. At all times relevant herein, Defendants were required to pay their employees all
6 wages owed in a timely fashion at the end of employment, pursuant to the mandates of Labor
7 Code sections 201 to 204.

8 108. As a pattern and practice, as a result of Defendants' Labor Code violations
9 alleged above, Defendants failed to pay Plaintiff and other aggrieved former employees their
10 final wages pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time
11 penalties pursuant to Labor Code section 203.

12 **Failure to Provide Complete and Accurate Wage Statements**

13 109. At all times relevant herein, Defendants were required to keep *accurate* records
14 regarding their California employees, pursuant to the mandates of Labor Code sections 226 and
15 1174.

16 110. As a pattern and practice, as a result of Defendants' various Labor Code
17 violations, Defendants failed to keep accurate records regarding Plaintiff and other aggrieved
18 current and former employees. Specifically, Defendants willfully failed in their affirmative
19 obligations to keep accurate records regarding Plaintiff and other aggrieved employees' gross
20 wages earned, total hours worked, net wages earned, as well as all deductions, all applicable
21 hourly rates, and the number of hours worked at each hourly rate. Defendants thereby failed to
22 provide Plaintiff and other aggrieved employees with complete and accurate wage statements,
23 pursuant to the mandates of Labor Code section 226(a). Defendants also willfully failed to
24 keep accurate and complete payroll records showing the hours worked daily and the wages
25 paid to Plaintiff and other aggrieved employees, pursuant to the mandate of Labor Code
26 section 1174(d).

27 ///

1 **Failure to Reimburse Business Expenses**

2 111. At all times relevant herein, Defendants were required to reimburse their
3 employees for any and all necessary expenditures or losses incurred by the employees in direct
4 consequence of the discharge of their duties pursuant to the mandate of Labor Code sections
5 2800 and 2802.

6 112. As a pattern and practice, Defendants failed to reimburse Plaintiff and other
7 aggrieved current and former employees for all business expenses incurred and owing them
8 within the required time period.

9 **Penalties**

10 117. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
11 behalf of other current and former aggrieved employees, request and are entitled to recover from
12 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but
13 not limited to:

14 a. Penalties under California Labor Code section 2699 in the amount of one
15 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
16 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
17 violation;

18 b. Penalties under California Code of Regulations Title 8 section 11040 in
19 the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial
20 violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each
21 subsequent violation;

22 c. Penalties under California Labor Code section 210 in addition to, and
23 entirely independent and apart from, any other penalty provided in the California Labor Code in
24 the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
25 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
26 each subsequent violation;

1 d. Penalties under Labor Code section 1197.1 in the amount of one hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
3 hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent
4 violation;

5 e. Wages under California Labor Code section 558 in addition to, and
6 entirely independent and apart from, any other penalty provided in the California Labor Code;

7 f. Any and all additional penalties as provided by the Labor Code and/or
8 other statutes; and

9 g. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and
10 2699, and any other applicable statute.

11 **NINTH CAUSE OF ACTION**

12 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

13 **(Against AMERIPEC, INC. and DOES 1 through 100)**

14 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 117, and each and every part thereof, with the same force and effect as though fully set
16 forth herein.

17 119. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
18 unlawful and harmful to Plaintiff, other class members, the general public, and Defendants'
19 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
20 within the meaning of Code of Civil Procedure section 1021.5.

21 120. Defendants' activities as alleged herein are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business & Professions
23 Code section 17200, *et seq.*

24 121. A violation of California Business & Professions Code section 17200, *et seq.* may
25 be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern
26 and practice of requiring Plaintiff and other class members to work overtime hours without
27 paying them proper compensation violate California Labor Code sections 510 and 1198.

1 Additionally, Defendants' pattern and practice of requiring Plaintiff and other class members to
2 work through their meal and rest periods without paying them proper compensation violate
3 California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of
4 failing to timely pay wages to Plaintiff and other class members violate California Labor Code
5 sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194,
6 1197, 2800 and 2802.

7 122. As a result of the herein described violations of California law, Defendants
8 unlawfully gained an unfair advantage over other businesses.

9 123. Plaintiff and other class members have been personally injured by Defendants'
10 unlawful business acts and practices as alleged herein, including but not necessarily limited to
11 the loss of money and/or property.

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

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, individually, on behalf of other members of the general public similarly
19 situated, and on behalf of aggrieved employees pursuant to PAGA, request a trial by jury.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually, on behalf of all other members of the general
22 public similarly situated, and on behalf of other aggrieved employees pursuant to PAGA, prays
23 for relief and judgment against Defendants, jointly and severally, as follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action;
- 26 2. That Plaintiff be appointed as representatives of the Class;
- 27 3. That counsel for Plaintiff be appointed as Class Counsel; and

1 4. That Defendants provide to Class Counsel immediately the names and most
2 current contact information (address, e-mail and telephone numbers) of all class members.

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

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

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

9 7. For pre-judgment interest on any unpaid overtime compensation commencing
10 from the date such amounts were due;

11 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Labor Code section 1194; and

13 9. For such other and further relief as the court may deem just and proper.

14 **As to the Second Cause of Action**

15 10. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
17 provide all meal periods (including second meal periods) to Plaintiff and other class members;

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

21 12. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 13. For premium wages pursuant to California Labor Code section 226.7(b);

24 14. For pre-judgment interest on any unpaid wages from the date such amounts
25 were due;

26 15. For reasonable attorneys' fees and costs of suit incurred herein; and

27 16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and other class members;

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

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

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1997.1 by willfully failing to pay minimum wages to Plaintiff and other class members;

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

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

29. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other class members no longer employed by Defendants;

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

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and other class members, and willfully failed to provide accurate itemized wage statements thereto;

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

37. For statutory penalties pursuant to California Labor Code section 226(e);

38. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

39. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

40. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class members for all necessary business-related expenses as required by California Labor Code

sections 2800 and 2802;

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

42. For the imposition of civil penalties and/or statutory penalties;

43. For punitive damages and/or exemplary damages according to proof at trial;

44. For reasonable attorneys' fees and costs of suit incurred herein; and

45. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

46. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 2698, *et seq.*, by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks, failing to timely pay wages during employment and upon termination, failing to provide complete and accurate wage statements, and failing to reimburse expenses;

47. For civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;

48. For costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, and 2699, and any other applicable statute; and

49. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

50. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code section 17200, *et seq.*, by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and other class members, failing to pay at least minimum wages to Plaintiff and other class members, failing to pay Plaintiff and other class members' wages timely as required by California Labor Code sections 201 and 202.

51. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

1 52. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of California Business & Professions Code section 17200, *et*
4 *seq.*;

5 53. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5;

7 54. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business & Professions Code section 17200, *et seq.*; and

9 55. For such other and further relief as the court may deem just and proper.

10
11 Dated: April 14, 2022

JUSTICE LAW CORPORATION

12
13
14 By: _____

Douglas Han

Shunt Tatavos-Gharajeh

Jason Rothman

15
16 *Attorneys for Plaintiff Adrian Escobedo, on*
17 *behalf of himself and all others similarly*
18 *situated*

EXHIBIT 1

August 31, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: AMERIPEC, INC.

Dear Representative:

We have been retained to represent Todd Martin against Ameripec, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "AMERIPEC").

Mr. Martin is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Martin may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Ameripec, Inc. is a California corporation located at 6965 Aragon Circle, Buena Park, California 90620.

AMERIPEC employed Mr. Martin as an hourly-paid non-exempt Batchelor/Cook within one year of the date of this letter (until in or about May of 2020²) in the State of California. AMERIPEC directly controlled the wages, hours and working conditions of Mr. Martin's employment.

¹ Mr. Martin does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Martin will amend this notice when the true names and capacities are known. Mr. Martin is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Martin and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Martin's PAGA cause of action is tolled.

The “aggrieved employees” that Mr. Martin may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of AMERIPEC within the State of California.

AMERIPEC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Martin has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at AMERIPEC, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

AMERIPEC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Martin and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. AMERIPEC failed to compensate Mr. Martin and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. Additionally, AMERIPEC maintained an illegal rounding policy that negatively affected Mr. Martin and other aggrieved employees’ time and pay. AMERIPEC also failed to include non-discretionary bonuses and incentives in Mr. Martin and other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Martin and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, AMERIPEC routinely required Mr. Martin and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with AMERIPEC policies and expectations. AMERIPEC also failed to cease operations or otherwise adequately staff its facilities so Mr. Martin and other aggrieved employees could be relieved of work duties and take their meal and rest breaks. Moreover, AMERIPEC failed to authorize and permit Mr. Martin and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Lastly, because AMERIPEC did not maintain an adequate number of time clocks, Mr. Martin and other aggrieved employees were forced to line up at the time clock prior to the end of their meals breaks to ensure they clocked in and timely reported back to work after their break. Despite these facts, AMERIPEC failed to compensate Mr. Martin and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, AMERIPEC failed to pay Mr. Martin and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, AMERIPEC failed to pay Mr. Martin and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, AMERIPEC did not provide Mr. Martin and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from AMERIPEC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Martin and other aggrieved employees, (2) total hours worked by Mr. Martin and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Martin and other aggrieved employees (4) all deductions for Mr. Martin and other aggrieved employees, (5) net wages earned by Mr. Martin and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Martin and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Martin and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Martin and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, 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. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, AMERIPEC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Martin and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, AMERIPEC did not provide Mr. Martin and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Martin and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by AMERIPEC, including for purchasing gear (like glasses and vests) they were required to wear while working, using their personal cellular phones to communicate with managers regarding their schedules and shifts, and purchasing equipment (like razor blades) they needed to perform their jobs.

We believe that Mr. Martin and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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LWDA
August 31, 2020
Page 6 of 6

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Martin will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of AMERIPEC within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Ping C. Wu
c/o Ameripec, Inc.
6965 Aragon Circle
Buena Park, California 90620
Agent for Service of Process for Ameripec, Inc.

EXHIBIT 2

January 6, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: **AMERIPEC, INC.**
AMENDED LWDA LETTER REGARDING LWDA CASE NO. LWDA-CM-
804605-20

Dear Representative:

We have been retained to also represent Adrian Escobedo, in addition to Todd Martin, against Ameripec, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "AMERIPEC").

Mr. Escobedo is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Escobedo may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Ameripec, Inc. is a California corporation located at 6965 Aragon Circle, Buena Park, California 90620.

AMERIPEC employed Mr. Escobedo as an hourly-paid non-exempt material coordinator within the time period that is subject to the original PAGA notice letter from Mr. Martin, (between August 31, 2019 to the present) in the State of California. AMERIPEC directly controlled the wages, hours and working conditions of Mr. Escobedo's employment.

¹ Mr. Escobedo does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Escobedo will amend this notice when the true names and capacities are known. Mr. Escobedo is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Escobedo and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. Escobedo may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of AMERIPEC within the State of California, during the period from August 31, 2019, to the present.

AMERIPEC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Escobedo has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at AMERIPEC, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

AMERIPEC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Escobedo and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. AMERIPEC failed to compensate Mr. Escobedo and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. Additionally, AMERIPEC maintained an illegal rounding policy that negatively affected Mr. Escobedo and other aggrieved employees’ time and pay. AMERIPEC also failed to include non-discretionary bonuses and incentives in Mr. Escobedo and other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Escobedo and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, AMERIPEC routinely required Mr. Escobedo and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with AMERIPEC policies and expectations. AMERIPEC also failed to cease operations or otherwise adequately staff its facilities so Mr. Escobedo and other aggrieved employees could be relieved of work duties and take their meal and rest breaks. Moreover, AMERIPEC failed to authorize and permit Mr. Escobedo and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Lastly, because AMERIPEC did not maintain an adequate number of time clocks, Mr. Escobedo and other aggrieved employees were forced to line up at the time clock prior to the end of their meals breaks to ensure they clocked in and timely reported back to work after their break. Despite these facts, AMERIPEC failed to compensate Mr. Escobedo and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, AMERIPEC failed to pay Mr. Escobedo and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, AMERIPEC failed to pay Mr. Escobedo and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work and premium wages for failing to provide legally mandated meal and rest breaks.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, AMERIPEC did not provide Mr. Escobedo and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from AMERIPEC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Escobedo and other aggrieved employees, (2) total hours worked by Mr. Escobedo and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Escobedo and other aggrieved employees (4) all deductions for Mr. Escobedo and other aggrieved employees, (5) net wages earned by Mr. Escobedo and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Escobedo and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Escobedo and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Escobedo and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, 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. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, AMERIPEC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Escobedo and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, AMERIPEC did not provide Mr. Escobedo and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Escobedo and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by AMERIPEC, including for purchasing gear (like glasses and vests) they were required to wear while working, using their personal cellular phones to communicate with managers regarding their schedules and shifts, and purchasing equipment (like razor blades) they needed to perform their jobs.

We believe that Mr. Escobedo and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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LWDA
January 6, 2022
Page 6 of 6

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Escobedo will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of AMERIPEC within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Ping C. Wu
c/o Ameripec, Inc.
6965 Aragon Circle
Buena Park, California 90620
Agent for Service of Process for Ameripec, Inc.

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is dcseri@justicelawcorp.com

On April 15, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Escobedo v. Ameripec, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-804605-20**
Court Case No.: 30-2020-01170846-CU-OE-CXC
Orange County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

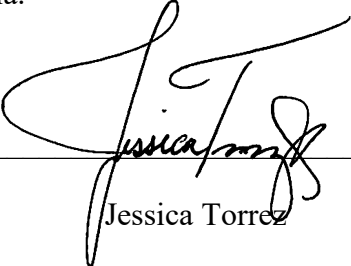
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 15, 2022, at Pasadena, California.



Jessica Torrez