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SANTIAGO ROSAS on behalf of himself and others
similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SANTIAGO ROSAS on behalf of himself and
others similarly situated.

PLAINTIFF,

vs.

MOUNTAIN F. ENTERPRISES, INC., a
California corporation; and DOES 1 to 100,
Inclusive.

DEFENDANTS.

Case No.: 34-2020-00284823-CU-OE-GDS

CLASS ACTION

**PLAINTIFF SANTIAGO ROSAS' FIRST
AMENDED COMPLAINT FOR:**

1. **FAILURE TO PROVIDE
MINIMUM WAGE OR OVERTIME
PAY FOR ALL HOURS WORKED
IN VIOLATION OF LABOR CODE
SECTIONS 510, 1194, 1198 AND
THE WAGE ORDERS**
2. **FAILURE TO PROVIDE ALL
LEGALLY REQUIRED AND
LEGALLY COMPLIANT MEAL
PERIODS IN VIOLATION OF
LABOR CODE SECTIONS 226.7,
512, 1198, AND THE WAGE
ORDERS**
3. **FAILURE TO PROVIDE ALL
LEGALLY REQUIRED AND
LEGALLY COMPLIANT REST
BREAKS IN VIOLATION OF**

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**LABOR CODE SECTION 226.7,
1198, AND THE WAGE ORDERS**

4. **FAILURE TO REIMBURSE
EMPLOYEES AND/OR
DEDUCTING FROM EMPLOYEES
WAGES WITHOUT
REIMBURSEMENT FOR
PAYMENTS FOR LOSSES OR
NECESSARY EXPENDITURES
INCURRED BY THE EMPLOYEE
IN DISCHARGE OF THEIR
DUTIES IN VIOLATION OF
LABOR CODE SECTIONS 2802,
1198, OR 221 AND THE WAGE
ORDERS**
5. **FAILURE TO PROVIDE
COMPLETE AND ACCURATE
WAGE STATEMENTS IN
VIOLATION OF LABOR CODE
SECTION 226**
6. **FAILURE TO TIMELY PAY
EARNED WAGES DUE DURING
EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTION 204**
7. **FAILURE TO TIMELY PAY
UNPAID WAGES DUE AT TIME
OF SEPARATION OF
EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTIONS 201,
202, AND 203**
8. **UNFAIR BUSINESS PRACTICES
IN VIOLATION OF BUSINESS
AND PROFESSIONS CODE
SECTION 17200, *et seq.***
9. **CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA"),
LABOR CODE SECTION 2698, *et
seq.***

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff SANTIAGO ROSAS ("Plaintiff"), who alleges and complains against defendants MOUNTAIN F. ENTERPRISES, INC., and DOES 1 to 50, inclusive, (hereinafter, collectively referred to as "Defendants" or "DEFENDANTS"), and DOES 51 to 100 as follows:

1 **I. INTRODUCTION**

2 1. This is a wage and hour class action lawsuit and representative PAGA action on behalf
3 of Plaintiff, the State of California, and other current and former non-exempt employees of
4 DEFENDANTS in California seeking within the applicable statute of limitations periods (taking into
5 account any tolling, if applicable): unpaid minimum wage and overtime; premium wages for
6 workdays DEFENDANTS failed to provide all legally required and legally compliant meal periods;
7 premium wages for workdays DEFENDANTS failed to provide all legally required and legally
8 compliant rest periods; payments/reimbursement for amounts DEFENDANTS required employees to
9 pay or were charged from their wages without reimbursement for losses incurred by the employee in
10 discharging their duties and/or negligent shortages, breakage or loss of equipment, including but not
11 limited to charging employees for lost tools; penalties for failure to provide complete and accurate
12 itemized wage statements; penalties for failure to timely pay earned wages during employment;
13 waiting time penalties in the form of continuation wages for failure to timely pay former employees
14 all unpaid wages following separation of employment; civil penalties for Labor Code violations
15 pursuant to the PAGA; injunctive relief and other equitable relief, reasonable attorney's fees pursuant
16 to any relevant statute including but not limited to Labor Code section 1194, 226(e), 2699, 2802,
17 costs, and interest, if applicable, brought on behalf of Plaintiff and others similarly situated.

18 **II. JURISDICTION AND VENUE**

19 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
20 Plaintiff's lawsuit seeks permanent injunction, damages, and restitution for herself, the State of
21 California, and the current/former employees as aggrieved employees and/or class members in excess
22 of \$25,000, Defendant MOUNTAIN F. ENTERPRISES, INC. is a California citizen, and Defendant
23 MOUNTAIN F. ENTERPRISES, INC. is a resident of, is domiciled in, and has its principal place of
24 business in Sacramento County at 1180 Iron Point Road, Suite 350, Folsom, California 95630.

25 **III. PARTIES**

26 3. Plaintiff brings this action on behalf of himself and other members of the general
27 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is
28 filed are current, former and/or future employees of DEFENDANTS who worked, work, or will work

1 for DEFENDANTS as non-exempt hourly employees in California. At all times mentioned herein,
2 the currently named Plaintiff is and was domiciled and a resident and citizen of California and was
3 employed by DEFENDANTS in a non-exempt position within the 4 years prior to the filing of the
4 complaint. Plaintiff worked for DEFENDANTS as an hourly, non-exempt employee in California as
5 a Groundman Helper from approximately 2010 until his termination on July 10, 2020.

6 4. Plaintiff is informed and believes and thereon alleges that Defendant MOUNTAIN F.
7 ENTERPRISES, INC. is a California corporation, incorporated in California, and a California citizen
8 with its principal place of business in California, is authorized to do business within the State of
9 California, and is doing business in the State of California and/or that Defendants DOES 51-100 are,
10 and at all times relevant hereto were persons acting on behalf of MOUNTAIN F. ENTERPRISES,
11 INC. who violated or caused to be violated provisions of the Labor Code and/or the Industrial Welfare
12 Commission's wage orders regulating hours and days of work. Plaintiff is informed and believes and
13 thereon alleges that MOUNTAIN F. ENTERPRISES, INC. was Plaintiff's employer and suffered and
14 permitted Plaintiff and similarly situated non-exempt employees to work and exercised control over
15 the wages, hours and working conditions of employment of Plaintiff and similarly situated non-
16 exempt employees.

17 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through
18 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff
19 that employed PLAINTIFF and the similarly situated California non-exempt employees, permitted
20 Plaintiff and similarly situated non-exempt employees to work, and exercised control over the wages,
21 hours and working conditions of employment of Plaintiff and similarly situated non-exempt
22 employees.

23 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
24 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
25 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
26 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
27 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
28 Industrial Welfare Commission's wage orders regulating hours and days of work.

1 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
2 sues said defendants by said fictitious names, and will amend this complaint when the true names and
3 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by
4 law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants
5 is in some manner responsible for the events and allegations set forth in this complaint.

6 8. Plaintiff makes the allegations in this complaint without any admission that, as to any
7 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
8 reserves all of Plaintiff's right to plead in the alternative.

9 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

10 9. **Failure to pay wages for all hours worked at the legal minimum wage rate:**
11 DEFENDANTS employ many employees, including Plaintiffs, as non-exempt employees.
12 DEFENDANTS used policies and procedures (e.g., failure to pay for off the clock time and paying
13 or recording only scheduled shift time) which resulted in DEFENDANTS not paying wages to non-
14 exempt employees for compensable time the employees were subject to the control of
15 DEFENDANTS and/or were suffered and permitted to work.

16 10. In California, an employer is required to pay an employee for all "hours worked" which
17 includes all time that an employee is under control of the employer and including all time that the
18 employee is suffered and permitted to work. This includes the time an employee spends, either
19 directly or indirectly, performing services which inure to the benefit of the employer and any time
20 during which an employer's policies and procedures do not allow employees to use time effectively
21 for their own purposes. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586-588; *Bono*
22 *Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968.) In turn, this includes but is not limited to
23 time spent by employees during which they cannot effectively use for their own purposes because the
24 employees are compelled to do so by the necessities of the employer's business. Such time includes
25 time an employee is required to clock in and/or required to be present (e.g., for reasons including but
26 not limited to clocking in prior to a shift or to receive communications from Defendant).

27 11. Labor Code sections 1194 and 1197 require that an employer compensate employees
28 for "hours worked" at least at a minimum wage rate of pay as established by the wage orders.

1 12. Despite that California law requires employers to pay employees for all hours worked
2 at least at a minimum wage rate, DEFENDANTS used policies and procedures (e.g., failure to pay
3 for off the clock time and paying or recording only scheduled shift time) which did not provide wages
4 to Plaintiff and other similarly situated California employees for all time DEFENDANTS controlled
5 the employees and/or suffered or permitted the employees to work. Instead, DEFENDANTS engaged
6 in improper practices including but not limited to providing wages to Plaintiff and other similarly
7 situated California employees for their scheduled shift with an automatic deduction of 30 minutes for
8 meal periods even if an employee did not take a meal break or the meal break was shorter than 30
9 minutes. This resulted in hours worked by Plaintiff and other similarly situated California employees
10 outside of their scheduled shift and during some meal periods which DEFENDANTS did not pay
11 them any wages. This unpaid time included but is not limited to: the time Plaintiff and other similarly
12 situated employees were required to show up before their scheduled shift to perform duties such as
13 gathering tools; the time after the employees shift when work, traveling back to the yard, and engaging
14 in duties at the yard to put away tools would run past the end of the employees' scheduled shift; and
15 the time employees were engaged in work or were under control of DEFENDANTS during the 30
16 minutes' time DEFENDANTS deducted from Plaintiff and other similarly situated employees' meal
17 periods even when Plaintiff and other similarly situated employees received a meal period of less than
18 30 minutes or did not receive a meal period and were working during this unpaid time.

19 13. For example, at times from August 31, 2016 to the present, DEFENDANTS would
20 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
21 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
22 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
23 a meal break. DEFENDANTS would pay wages to Plaintiff and other similarly situated employees
24 for scheduled work times, i.e., 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10 hours
25 when scheduled to work from 7:00 a.m. to 5:30 p.m. However, this did not provide Plaintiff and other
26 similarly situated employees with wages for all hours the employees worked. At times from August
27 31, 2016 to the present, DEFENDANTS would regularly require Plaintiff and other similarly situated
28 employees to show up prior to their scheduled shift without compensation of wages to engage in

1 duties to prepare for the workday such as gathering tools to be ready to immediately leave for their
2 worksite after an exercise/safety meeting at the start of their shift. At times from August 31, 2016 to
3 the present, Plaintiff and other similarly situated employees would work without wages beyond the
4 scheduled end of their shift at 3:30 p.m. or 5:30 p.m. when finishing up work at the last worksite,
5 traveling back to the yard through traffic, and engaging in duties at the yard to put away tools would
6 run past the end of the employees' scheduled shift. At times from August 31, 2016 to the present,
7 Plaintiff and other similarly situated employees would work without wages when DEFENDANTS
8 would deduct 30 minutes for meal periods from Plaintiff and other similarly situated employees'
9 scheduled shift (i.e., paying wages of 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10
10 hours when scheduled to work from 7:00 a.m. to 5:30 p.m.) when at times Plaintiff and other similarly
11 situated employees' meal periods were shorter than 30 minutes when they returned to work.

12 14. As a result of DEFENDANTS' policies and procedures (e.g., failure to pay for off the
13 clock time and paying or recording only scheduled shift time as compensable time), this resulted in
14 non-exempt employees working time which DEFENDANTS provide to compensate minimum wage
15 in violation of Labor Code sections 1194, 1197, and the Wage Orders.

16 15. **Failure to pay wages for all hours worked at the employee's overtime rate of pay:**
17 DEFENDANTS employ many of their employees, including Plaintiff, as non-exempt employees.
18 DEFENDANTS used policies and procedures (e.g., failure to pay for off the clock time and paying
19 or recording only scheduled shift time) which resulted in DEFENDANTS not paying wages to non-
20 exempt employees for compensable time the employees were subject to the control of
21 DEFENDANTS and/or were suffered and permitted to work.

22 16. In California, an employer is required to pay an employee for all "hours worked" which
23 includes all time that an employee is under control of the employer and including all time that the
24 employee is suffered and permitted to work. This includes the time an employee spends, either
25 directly or indirectly, performing services which inure to the benefit of the employer and any time
26 during which an employer's policies and procedures do not allow employees to use time effectively
27 for their own purposes. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586-588; *Bono*
28 *Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968.) In turn, this includes but is not limited to

1 time spent by employees during which they cannot effectively use for their own purposes because the
2 employees are compelled to do so by the necessities of the employer's business. Such time includes
3 time an employee is required to clock in and/or required to be present (e.g., for reasons including but
4 not limited to clocking in prior to a shift or to receive communications from Defendant).

5 17. Labor Code sections 510 and 1194 and the Wage Orders require an employer to
6 compensate employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40
7 hours in a workweek, and on any seventh consecutive day of work in a workweek.

8 Any work in excess of eight hours in one workday and any work in
9 excess of 40 hours in any one workweek and the first eight hours
10 worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the
12 regular rate of pay for an employee. Any work in excess of 12 hours in
13 one day shall be compensated at the rate of no less than twice the
14 regular rate of pay for an employee. In addition, any work in excess of
15 eight hours on any seventh day of a workweek shall be compensated at
16 the rate of no less than twice the regular rate of pay of an employee.

17 (Lab. Code §510; IWC Wage Orders § 3.)

18 18. Despite that California law requires employers to pay employees for all "hours
19 worked" at a higher rate of pay when work hours are in excess of 8 hours in a workday, 40 hours in a
20 workweek, or a 7th day in a workweek; DEFENDANTS failed to pay wages to employees for time
21 which DEFENDANTS controlled Plaintiffs and similarly situated California employees and/or were
22 suffered and permitted Plaintiffs and similarly situated California employees to work. For example,
23 this unpaid time included but is not limited to: the time Plaintiff and other similarly situated
24 employees were required to show up before their scheduled shift to perform duties such as gathering
25 tools; the time after the employees shift when work, traveling back to the yard, and engaging in duties
26 at the yard to put away tools would run past the end of the employees' scheduled shift; and the time
27 employees were engaged in work or were under control of DEFENDANTS during the 30 minutes'
28 time DEFENDANTS deducted from Plaintiff and other similarly situated employees' meal periods
even when Plaintiff and other similarly situated employees received a meal period of less than 30
minutes or did not receive a meal period and were working during this unpaid time. At times, this
unpaid time would occur during work periods that Plaintiff and other employees had already worked
over 8 hours in a workday, over 40 hours in a workweek, or on 7th day of work in a workweek

1 entitling Plaintiff or the other similarly situated employees to a higher rate of pay (i.e., "overtime
2 pay").

3 19. For example, at times from August 31, 2016 to the present, DEFENDANTS would
4 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
5 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
6 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
7 a meal break. DEFENDANTS would pay wages to Plaintiff and other similarly situated employees
8 for scheduled work times, i.e., 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10 hours
9 when scheduled to work from 7:00 a.m. to 5:30 p.m. However, this did not provide Plaintiff and other
10 similarly situated employees with wages for all hours the employees worked. Any unpaid time for
11 hours worked by Plaintiff and other similarly situated employees on a day scheduled from 7:00 a.m.
12 to 3:30 p.m. or 7:00 a.m. to 5:30 p.m. was in excess of 8 hours in a workday and entitled the employees
13 to overtime wages.

14 20. At times from August 31, 2016 to the present, DEFENDANTS would regularly require
15 Plaintiff and other similarly situated employees to show up prior to their scheduled shift without
16 compensation of wages to engage in duties to prepare for the workday such as gathering tools to be
17 ready to immediately leave for their worksite after an exercise/safety meeting at the start of their shift.
18 At times from August 31, 2016 to the present, Plaintiff and other similarly situated employees would
19 work without wages beyond the scheduled end of their shift at 3:30 p.m. or 5:30 p.m. when finishing
20 up work at the last worksite, traveling back to the yard through traffic, and engaging in duties at the
21 yard to put away tools would run past the end of the employees' scheduled shift. At times from August
22 31, 2016 to the present, Plaintiff and other similarly situated employees would work without wages
23 when DEFENDANTS would deduct 30 minutes for meal periods from Plaintiff and other similarly
24 situated employees' scheduled shift (i.e., paying wages of 8 hours when scheduled from 7:00 a.m. to
25 3:30 p.m. and 10 hours when scheduled to work from 7:00 a.m. to 5:30 p.m.) when at times Plaintiff
26 and other similarly situated employees' meal periods were shorter than 30 minutes when they returned
27 to work.
28

1 21. As a result of DEFENDANTS' policies and procedures (e.g., failure to pay for off the
2 clock time and paying or recording only scheduled shift time as compensable time), this resulted in
3 non-exempt employees working time which DEFENDANTS provide to compensate, but which
4 DEFENDANTS failed to pay wages in violation of Labor Code sections 510, 1194, and the Wage
5 Orders

6 22. **Failure to pay premium wages to non-exempt employees to compensate them for**
7 **workdays Defendants failed to provide all legally required and/or legally compliant meal**
8 **breaks:** California law requires an employer to provide an employee an uninterrupted meal period of
9 no less than 30-minutes before the end of a 5 hour work period during which employees are relieved
10 of all duties. (Lab. Code §§226.7, 512, 1198; Wage Orders, subd. 11.) In addition, an employer may
11 not employ an employee for a work period of more than 10 hours per day without providing the
12 employee with a second meal period of not less than 30 minutes before the end of the 10th hour of
13 work. (*Id.*) If the employee is not relieved of all duties during a 30 minute meal period, the meal
14 period is considered "on duty" and the entire meal period is counted as time worked. (Wage Orders,
15 subd. 11.) If an employee is not free to leave the work place during a meal period, the employee is
16 not relieved of all duties during the meal period and is subject to the control of the employer and does
17 not comply with the requirement of an employee being relieved of all duties during their meal. (*Bono*
18 *Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further, an employer cannot impede
19 or discourage an employee from taking a meal period off premises and which they are relieved of all
20 duties and control of the employer. (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1039.) If an
21 employer fails to provide an employee a meal period in accordance with the law, the employer must
22 pay the employee one hour of pay at the employee's regular rate of compensation for each work day
23 that a legally required meal period was not provided or was not duty free. (*Id.*)

24 23. At times, Plaintiff and other current and former employees worked shifts in excess of
25 five hours, six hours, or ten hours and did not receive a meal periods or timely meal periods for each
26 five hour period of work. DEFENDANTS employed policies and procedures which failed to provide
27 Plaintiff and other employees with uninterrupted duty free 30 minute meal periods for each five hours
28 worked and/or failed to provide timely meal periods. At times within the four years prior to the filing

1 of this notice, DEFENDANTS provided Plaintiff and other employees with meal periods which were
2 shorter than 30 minutes or occurred after the 5th hour of work. In addition, DEFENDANTS only
3 provided at most one meal period per day regardless of the number of hours the employees' worked.
4 At times, Plaintiff and other employees would work longer than 10 hours in a day, but
5 DEFENDANTS did not provide them a second meal period.

6 24. For example, at times from August 31, 2016 to the present, DEFENDANTS would
7 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
8 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
9 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
10 a meal break. DEFENDANTS generally scheduled Plaintiff and other similarly situated employees
11 for one 30-minute meal from 12:00 p.m. to 12:30 p.m. for either the 7:00 a.m. to 3:30 p.m. shift or
12 the 7:00 a.m. to 5:30 p.m. shift. However, at times employees were engaged in work duties and
13 DEFENDANTS delayed Plaintiff and other similarly situated employees to 1:00 p.m. or later. This
14 violated California law because DEFENDANTS provided Plaintiff and other similarly situated
15 employees with their meal period after the end of their fifth hour of work which required the meal to
16 be provided to Plaintiff and other similarly situated employees by 12:59 p.m. for a scheduled shift
17 beginning at 7:00 a.m. and even earlier because Plaintiff and other similarly situated employees
18 regularly began their workday before 7:00 a.m. when DEFENDANTS required them to show up prior
19 to their scheduled shift to prepare for the workday such as gathering tools to be ready to immediately
20 leave for their worksite after an exercise/safety meeting at the start of their shift. As noted above,
21 when Plaintiff and other similarly situated employees were scheduled to work a 10-hour workday
22 from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal period), at times
23 their 10-hour workday was extended over 10-hours for reasons including but not limited to scheduling
24 or due to work performed prior to the shift such as gathering tools, when a meal break was shorter
25 than 30 minutes on that day, or when finishing up work at the last worksite, traveling back to the yard
26 through traffic, and engaging in duties at the yard to put away tools would run past the end of the
27 employees' scheduled shift. On those workdays, Plaintiff and other similarly situated employees were
28 entitled to a second meal period; however, DEFENDANTS' meal policy only provided for one meal

1 break generally from 12:00 p.m. to 12:30 p.m. Thus, on workdays Plaintiff and other similarly situated
2 employees worked over 10 hours, DEFENDANTS failed to provide a second meal period no later
3 than the end of the employees' 10th hour of work.

4 25. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
5 pay for each workday Plaintiff and similarly situated employees did not receive all legally required
6 and legally compliant meal periods. DEFENDANTS lacked a policy and procedure for compensating
7 employees with premium wages when they did not receive all legally required and legally compliant
8 meal periods. This practice resulted in Plaintiff and all other similarly situated employees working
9 not receiving wages to compensate them for workdays which DEFENDANTS did not provide them
10 with all legally required and legally compliant meal periods in compliance with California law.

11 26. **Failure to pay premium wages to non-exempt employees to compensate them for**
12 **workdays Defendants failed to provide all legally required and/or legally compliant rest breaks:**
13 California law states that "[e]very employer shall authorize and permit all employees to take rest
14 periods, which insofar as practicable shall be in the middle of each work period. The authorized rest
15 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
16 per four (4) hours or major fraction thereof. ... If an employer fails to provide an employee a rest
17 period in accordance with the applicable provisions of this order, the employer shall pay the employee
18 one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
19 period is not provided." (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under California law,
20 "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length,
21 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
22 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code
23 §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work period. (Wage
24 Orders, subd. 12.) In addition, if an employer requires employees to stay on the premises during the
25 rest period, they are under control of the employer and they are not relieved of all duties in violation
26 of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 271.) If an employer
27 fails to provide an employee a timely and legally compliant rest period, the employer must pay the
28 employee one hour of pay at the employee's regular rate of compensation for each work day that a

1 legally required meal period was not provided or was not duty free. (Wage Orders, subd. 12.)

2 27. DEFENDANTS employed a policy and procedure which failed to provide Plaintiff
3 and other employees with legally compliant rest periods. At times, Plaintiff and other employees
4 worked over 3.5 hours in a workday but did not receive rest breaks. In addition, DEFENDANTS' rest
5 period policy failed to provide rest periods for every "major fraction thereof" of four-hour work
6 periods. Accordingly, pursuant to this policy DEFENDANTS did not provide for a second rest period
7 if employees worked more than 6 hours but less than 8 hours or a third rest period if employees
8 worked more than 10 hours but less than 12 hours. DEFENDANTS would only provide at most one
9 rest break (which was often not provided) when employees worked up to a ten-hour workday. Thus,
10 Plaintiff and other employees would work more than 6 hours up to 10 hours and would not receive a
11 second rest period. When Plaintiff and other employees worked 10 hours or more DEFENDANTS at
12 times would provide at most two rest periods (although the rest periods were often not provided).
13 Thus, employees would work over 10 hours but would not receive a third rest break.

14 28. For example, at times from August 31, 2016 to the present, DEFENDANTS would
15 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
16 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
17 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
18 a meal break. DEFENDANTS failed to implement a legally compliant rest period policy. When
19 Plaintiff and other similarly situated employees were scheduled for an 8-hour day, e.g., from 7:00
20 a.m. to 3:30 p.m., DEFENDANTS would only provide Plaintiff and other similarly situated
21 employees with one rest break. This violates California law which entitles employees to two rest
22 breaks a day when employees work over 6 hours in a workday. In addition, as noted above,
23 DEFENDANTS often failed to provide the employees with this rest break. When Plaintiff and other
24 similarly situated employees were scheduled for a 10-hour day, e.g., from 7:00 a.m. to 5:30 p.m.,
25 DEFENDANTS would only provide Plaintiff and other similarly situated employees with two rest
26 breaks. As noted above, when Plaintiff and other similarly situated employees were scheduled to work
27 a 10-hour workday from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal
28 period), at times their 10-hour workday was extended over 10-hours for reasons including but not

1 limited to scheduling or due to work performed prior to the shift such as gathering tools, when a meal
2 break was shorter than 30 minutes on that day, or when finishing up work at the last worksite, traveling
3 back to the yard through traffic, and engaging in duties at the yard to put away tools would run past
4 the end of the employees' scheduled shift. On those workdays, Plaintiff and other similarly situated
5 employees were entitled to a third rest period; however, DEFENDANTS' only provided two rest
6 breaks and as noted above, at times DEFENDANTS failed to provide one or both of the rest breaks.
7 Thus, on workdays Plaintiff and other similarly situated employees worked over 10 hours,
8 DEFENDANTS failed to provide two or three rest periods as required by California law.

9 29. As a result of DEFENDANTS' practice and procedure, Plaintiff and similarly situated
10 non-exempt employees did not receive all legally compliant and legally required rest periods in
11 compliance with California law.

12 30. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
13 pay for each workday Plaintiff and employees did not receive all timely and legally compliant rest
14 periods. DEFENDANTS lacked a policy and procedure for compensating employees with premium
15 wages when they did not receive all legally required and legally compliant rest periods.

16 31. This practice resulted in Plaintiff and all other similarly situated California non-
17 exempt employees not receiving wages to compensate them for workdays which DEFENDANTS did
18 not provide them with all legally required and/or legally compliant rest periods in compliance with
19 California law.

20 32. **Improper Charge To Employees For Breakage Or Losses And Failure To**
21 **Reimburse For Those Losses Incurred In The Discharge of Their Duties:** Labor Code section
22 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by
23 the employee in direct consequence of discharging his or her duties or obedience of directions of the
24 employer. Labor Code section 1198 requires employers to comply with the conditions required by
25 the Wage Orders and subdivision 8 of the Wage Orders prohibits an employer from deducting from
26 an employee's wages or from charging an employee for negligent cash shortages, breakage, or loss
27 of equipment. Labor Code section 221 prohibits employers from deducting any amounts from an
28 employee's wages.

1 33. DEFENDANTS had a policy in place which required employees to pay for lost or
2 damaged company property, including but not limited to company tools, by requiring them to pay for
3 or by deducting money from their wages to pay for lost or damaged company tools. For example,
4 twice in 2020 with the last time in July 2020, DEFENDANTS deducted \$350 from Plaintiff's wages
5 each time for lost tools and did not reimburse him this amount. DEFENDANTS' policy and deduction
6 from wages for lost tools without reimbursement violated Labor Code section 2802 because
7 DEFENDANTS required Plaintiff to pay for losses incurred by the employee in direct consequence
8 of the discharge of his or her duties without reimbursement. DEFENDANTS' policy and deduction
9 from wages for lost tools without reimbursement violated Labor Code section 221 because prohibits
10 an employer from deducting any monies an employer claims an employee owes to the employer from
11 the wages owed to the employee. DEFENDANTS' policy and deduction from wages for lost tools
12 without reimbursement violated Labor Code section 1198 because subdivision 8 of the Wage Orders
13 prohibits an employer from deducting from an employee's wages or from charging an employee for
14 negligent cash shortages, breakage, or loss of equipment.

15 34. These practices improperly charged PLAINTIFF and other similarly situated
16 employees with losses incurred as part of their employment without reimbursement and violated
17 Labor Code sections 2802, 1198, and 221.

18 35. **Itemized Wage Statement Violations:** California Labor Code section 226(a)
19 provides (inter alia) that, upon paying an employee his or her wages, the employer must "furnish each
20 of his or her employees ... an itemized statement in writing showing: (1) gross wages earned, (2) total
21 hours worked by the employee, except for any employee whose compensation is solely based on a
22 salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
23 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
24 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided,
25 that all deductions made on written orders of the employee may be aggregated and shown as one item,
26 (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
27 name of the employee and his or her social security number, (8) the name and address of the legal
28

1 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.”

3 36. At times during the one year prior to the filing of the Complaint, DEFENDANTS
4 failed to provide accurate and complete wage statements to Plaintiff and other non-exempt employees.
5 At times during the one year prior to the filing of the Complaint, DEFENDANTS provided itemized
6 wage statements which did not state or did not accurately state the employees’ total hours worked or
7 rates in effect during the pay period. Because DEFENDANTS failed to pay all minimum wage and
8 overtime due for all hours worked, failed to pay meal and rest period premiums as asserted in more
9 detail above, failed to provide reimbursement for losses and necessary charges—including charges
10 from wages—incurred as part of employment; DEFENDANTS failed to provide accurate and
11 complete item wage statements to Plaintiff and other similarly situated employees. Due to the
12 aforementioned improper policies, DEFENDANTS violated Labor Code section 226, subdivision (a),
13 by providing employees with itemized wage statements which failed to accurately state total hours
14 worked, gross wages earned, net wages earned, and applicable hourly rates and corresponding number
15 of hours worked.

16 37. For example, at times from August 31, 2016 to the present, DEFENDANTS would
17 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
18 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
19 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
20 a meal break. DEFENDANTS would pay wages to Plaintiff and other similarly situated employees
21 for scheduled work times, i.e., 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10 hours
22 when scheduled to work from 7:00 a.m. to 5:30 p.m. However, this did not provide Plaintiff and other
23 similarly situated employees with wages for all hours the employees worked. At times from August
24 31, 2016 to the present, DEFENDANTS would regularly require Plaintiff and other similarly situated
25 employees to show up prior to their scheduled shift without compensation of wages to engage in
26 duties to prepare for the workday such as gathering tools to be ready to immediately leave for their
27 worksite after an exercise/safety meeting at the start of their shift. At times from August 31, 2016 to
28 the present, Plaintiff and other similarly situated employees would work without wages beyond the

1 scheduled end of their shift at 3:30 p.m. or 5:30 p.m. when finishing up work at the last worksite,
2 traveling back to the yard through traffic, and engaging in duties at the yard to put away tools would
3 run past the end of the employees' scheduled shift. At times from August 31, 2016 to the present,
4 Plaintiff and other similarly situated employees would work without wages when DEFENDANTS
5 would deduct 30 minutes for meal periods from Plaintiff and other similarly situated employees'
6 scheduled shift (i.e., paying wages of 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10
7 hours when scheduled to work from 7:00 a.m. to 5:30 p.m.) when at times Plaintiff and other similarly
8 situated employees' meal periods were shorter than 30 minutes when they returned to work. During
9 pay periods these acts occurred, DEFENDANTS failed to accurately reflect the total hours worked,
10 gross wages earned, net wages earned, and applicable hourly rates and corresponding number of hours
11 worked because the wage statements did not include the time or wages owed for the time which
12 Plaintiff and other similarly situated employees were working before their scheduled shift, during
13 shortened meal periods, or after their scheduled shift.

14 38. For example, at times from August 31, 2016 to the present, DEFENDANTS would
15 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
16 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
17 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
18 a meal break. DEFENDANTS generally scheduled Plaintiff and other similarly situated employees
19 for one 30-minute meal from 12:00 p.m. to 12:30 p.m. for either the 7:00 a.m. to 3:30 p.m. shift or
20 the 7:00 a.m. to 5:30 p.m. shift. However, at times employees were engaged in work duties and
21 DEFENDANTS delayed Plaintiff and other similarly situated employees to 1:00 p.m. or later. This
22 violated California law because DEFENDANTS provided Plaintiff and other similarly situated
23 employees with their meal period after the end of their fifth hour of work which required the meal to
24 be provided to Plaintiff and other similarly situated employees by 12:59 p.m. for a scheduled shift
25 beginning at 7:00 a.m. and even earlier because Plaintiff and other similarly situated employees
26 regularly began their workday before 7:00 a.m. when DEFENDANTS required them to show up prior
27 to their scheduled shift to prepare for the workday such as gathering tools to be ready to immediately
28 leave for their worksite after an exercise/safety meeting at the start of their shift. As noted above,

1 when Plaintiff and other similarly situated employees were scheduled to work a 10-hour workday
2 from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal period), at times
3 their 10-hour workday was extended over 10-hours for reasons including but not limited to scheduling
4 or due to work performed prior to the shift such as gathering tools, when a meal break was shorter
5 than 30 minutes on that day, or when finishing up work at the last worksite, traveling back to the yard
6 through traffic, and engaging in duties at the yard to put away tools would run past the end of the
7 employees' scheduled shift. On those workdays, Plaintiff and other similarly situated employees were
8 entitled to a second meal period; however, DEFENDANTS' meal policy only provided for one meal
9 break generally from 12:00 p.m. to 12:30 p.m. Thus, on workdays Plaintiff and other similarly situated
10 employees worked over 10 hours, DEFENDANTS failed to provide a second meal period no later
11 than the end of the employees' 10th hour of work. During pay periods these acts occurred,
12 DEFENDANTS failed to accurately reflect the gross wages earned and net wages earned worked
13 because the wage statements did not include the wages owed for the meal period premiums for
14 DEFENDANTS' failure to provide legally compliant meal periods.

15 39. For example, at times from August 31, 2016 to the present, DEFENDANTS would
16 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
17 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
18 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
19 a meal break. DEFENDANTS failed to implement a legally compliant rest period policy. When
20 Plaintiff and other similarly situated employees were scheduled for an 8-hour day, e.g., from 7:00
21 a.m. to 3:30 p.m., DEFENDANTS would only provide Plaintiff and other similarly situated
22 employees with one rest break. This violates California law which entitles employees to two rest
23 breaks a day when employees work over 6 hours in a workday. In addition, as noted above,
24 DEFENDANTS often failed to provide the employees with this rest break. When Plaintiff and other
25 similarly situated employees were scheduled for a 10-hour day, e.g., from 7:00 a.m. to 5:30 p.m.,
26 DEFENDANTS would only provide Plaintiff and other similarly situated employees with two rest
27 breaks. As noted above, when Plaintiff and other similarly situated employees were scheduled to work
28 a 10-hour workday from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal

1 period), at times their 10-hour workday was extended over 10-hours for reasons including but not
2 limited to scheduling or due to work performed prior to the shift such as gathering tools, when a meal
3 break was shorter than 30 minutes on that day, or when finishing up work at the last worksite, traveling
4 back to the yard through traffic, and engaging in duties at the yard to put away tools would run past
5 the end of the employees' scheduled shift. On those workdays, Plaintiff and other similarly situated
6 employees were entitled to a third rest period; however, DEFENDANTS' only provided two rest
7 breaks and as noted above, at times DEFENDANTS failed to provide one or both of the rest breaks.
8 Thus, on workdays Plaintiff and other similarly situated employees worked over 10 hours,
9 DEFENDANTS failed to provide two or three rest periods as required by California law. During pay
10 periods these acts occurred, DEFENDANTS failed to accurately reflect the gross wages earned and
11 net wages earned worked because the wage statements did not include the wages owed for the rest
12 period premiums for DEFENDANTS' failure to provide legally compliant meal periods.

13 40. Thus, at times during the one year prior to the filing of the Complaint, DEFENDANTS
14 applied these policies and procedures to Plaintiff and other non-exempt employees in California
15 which resulted in DEFENDANTS failing to provide complete and accurate wage statements to non-
16 exempt employees in compliance with Labor Code section 226, subdivision (a).

17 41. **Failure to Timely Pay California Non-Exempt Employees Earned Wages During**
18 **Their Employment:** Labor Code section 204 requires that an employer pay employees their earned
19 wages timely during their employment. (Lab. Code §204 [requiring payment of wages earned
20 between 1st and 15th day between 16th and 26th day of month and wages earned between 16th and
21 last day between 1st and 10th day of following month].) In addition, an employer is required to pay
22 all unpaid wages timely after an employee's employment ends. The wages are due immediately upon
23 termination (Lab. Code §201) or within 72 hours of resignation (Lab. Code §202).

24 42. For example, at times from August 31, 2016 to the present, DEFENDANTS would
25 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
26 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
27 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
28 a meal break. DEFENDANTS would pay wages to Plaintiff and other similarly situated employees

1 for scheduled work times, i.e., 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10 hours
2 when scheduled to work from 7:00 a.m. to 5:30 p.m. However, this did not provide Plaintiff and other
3 similarly situated employees with wages for all hours the employees worked. At times from August
4 31, 2016 to the present, DEFENDANTS would regularly require Plaintiff and other similarly situated
5 employees to show up prior to their scheduled shift without compensation of wages to engage in
6 duties to prepare for the workday such as gathering tools to be ready to immediately leave for their
7 worksite after an exercise/safety meeting at the start of their shift. At times from August 31, 2016 to
8 the present, Plaintiff and other similarly situated employees would work without wages beyond the
9 scheduled end of their shift at 3:30 p.m. or 5:30 p.m. when finishing up work at the last worksite,
10 traveling back to the yard through traffic, and engaging in duties at the yard to put away tools would
11 run past the end of the employees' scheduled shift. At times from August 31, 2016 to the present,
12 Plaintiff and other similarly situated employees would work without wages when DEFENDANTS
13 would deduct 30 minutes for meal periods from Plaintiff and other similarly situated employees'
14 scheduled shift (i.e., paying wages of 8 hours when scheduled from 7:00 a.m. to 3:30 p.m. and 10
15 hours when scheduled to work from 7:00 a.m. to 5:30 p.m.) when at times Plaintiff and other similarly
16 situated employees' meal periods were shorter than 30 minutes when they returned to work. When
17 these acts occurred, DEFENDANTS failed to timely pay all wages earned because DEFENDANTS
18 never paid Plaintiff or other similarly situated employees with wages at any rate (minimum wage,
19 agreed rate, or overtime) for the time which Plaintiff and other similarly situated employees were
20 working before their scheduled shift, during shortened meal periods, or after their scheduled shift.

21 43. For example, at times from August 31, 2016 to the present, DEFENDANTS would
22 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
23 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
24 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
25 a meal break. DEFENDANTS generally scheduled Plaintiff and other similarly situated employees
26 for one 30-minute meal from 12:00 p.m. to 12:30 p.m. for either the 7:00 a.m. to 3:30 p.m. shift or
27 the 7:00 a.m. to 5:30 p.m. shift. However, at times employees were engaged in work duties and
28 DEFENDANTS delayed Plaintiff and other similarly situated employees to 1:00 p.m. or later. This

1 violated California law because DEFENDANTS provided Plaintiff and other similarly situated
2 employees with their meal period after the end of their fifth hour of work which required the meal to
3 be provided to Plaintiff and other similarly situated employees by 12:59 p.m. for a scheduled shift
4 beginning at 7:00 a.m. and even earlier because Plaintiff and other similarly situated employees
5 regularly began their workday before 7:00 a.m. when DEFENDANTS required them to show up prior
6 to their scheduled shift to prepare for the workday such as gathering tools to be ready to immediately
7 leave for their worksite after an exercise/safety meeting at the start of their shift. As noted above,
8 when Plaintiff and other similarly situated employees were scheduled to work a 10-hour workday
9 from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal period), at times
10 their 10-hour workday was extended over 10-hours for reasons including but not limited to scheduling
11 or due to work performed prior to the shift such as gathering tools, when a meal break was shorter
12 than 30 minutes on that day, or when finishing up work at the last worksite, traveling back to the yard
13 through traffic, and engaging in duties at the yard to put away tools would run past the end of the
14 employees' scheduled shift. On those workdays, Plaintiff and other similarly situated employees were
15 entitled to a second meal period; however, DEFENDANTS' meal policy only provided for one meal
16 break generally from 12:00 p.m. to 12:30 p.m. Thus, on workdays Plaintiff and other similarly situated
17 employees worked over 10 hours, DEFENDANTS failed to provide a second meal period no later
18 than the end of the employees' 10th hour of work. When these acts occurred, DEFENDANTS failed
19 to timely pay all wages earned because DEFENDANTS have never paid the wages owed for
20 DEFENDANTS' failure to provide legally compliant meal periods.

21 44. For example, at times from August 31, 2016 to the present, DEFENDANTS would
22 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
23 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
24 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
25 a meal break. DEFENDANTS failed to implement a legally compliant rest period policy. When
26 Plaintiff and other similarly situated employees were scheduled for an 8-hour day, e.g., from 7:00
27 a.m. to 3:30 p.m., DEFENDANTS would only provide Plaintiff and other similarly situated
28 employees with one rest break. This violates California law which entitles employees to two rest

1 breaks a day when employees work over 6 hours in a workday. In addition, as noted above,
2 DEFENDANTS often failed to provide the employees with this rest break. When Plaintiff and other
3 similarly situated employees were scheduled for a 10-hour day, e.g., from 7:00 a.m. to 5:30 p.m.,
4 DEFENDANTS would only provide Plaintiff and other similarly situated employees with two rest
5 breaks. As noted above, when Plaintiff and other similarly situated employees were scheduled to work
6 a 10-hour workday from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal
7 period), at times their 10-hour workday was extended over 10-hours for reasons including but not
8 limited to scheduling or due to work performed prior to the shift such as gathering tools, when a meal
9 break was shorter than 30 minutes on that day, or when finishing up work at the last worksite, traveling
10 back to the yard through traffic, and engaging in duties at the yard to put away tools would run past
11 the end of the employees' scheduled shift. On those workdays, Plaintiff and other similarly situated
12 employees were entitled to a third rest period; however, DEFENDANTS' only provided two rest
13 breaks and as noted above, at times DEFENDANTS failed to provide one or both of the rest breaks.
14 Thus, on workdays Plaintiff and other similarly situated employees worked over 10 hours,
15 DEFENDANTS failed to provide two or three rest periods as required by California law. When these
16 acts occurred, DEFENDANTS failed to timely pay all wages earned because DEFENDANTS have
17 never paid the wages owed for DEFENDANTS' failure to provide legally compliant rest periods.

18 45. For example, DEFENDANTS had a policy in place which required employees to pay
19 for lost or damaged company property, including but not limited to company tools, by requiring them
20 to pay for or by deducting money from their wages to pay for lost or damaged company tools. Twice
21 in 2020 with the last time in July 2020, DEFENDANTS deducted \$350 from Plaintiff's wages each
22 time for lost tools and did not reimburse him this amount. When these acts occurred, DEFENDANTS
23 failed to timely pay wages owed to Plaintiff and other similarly situated employees who had their
24 wages wrongfully withheld because DEFENDANTS have never paid Plaintiff or similarly situated
25 employees back their wrongfully withheld wages.

26 46. Because DEFENDANTS failed to pay Plaintiff and other non-exempt employees with
27 all wages (including unpaid minimum wage, earned wages, and overtime wages and unpaid premium
28 wages for missed meal and/or rest breaks all as described in more detail above) during their

1 employment and never paid these amounts after separation of employment; Defendant failed to timely
2 pay the employees these unpaid wages during their employment. As a result, Defendant violated
3 Labor Code section 204 by not paying Plaintiff and other aggrieved employees earned wages timely
4 during their employment.

5 **47. Failure to Pay Former California Non-Exempt Employees All Wages Due at**
6 **Time of Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
7 employee's employment ends. The wages are due immediately upon termination (Lab. Code §201)
8 or within 72 hours of resignation (Lab. Code §202).

9 **48.** DEFENDANTS willfully failed to pay all wages to Plaintiff and other non-exempt
10 employees (including unpaid minimum wage and overtime pay for all hours worked, premium wages
11 for failure to provide legally compliant meal and/or rest breaks as alleged in more detail above) during
12 their employment and never paid these amounts after Plaintiff and other employees separated
13 employment with DEFENDANTS. DEFENDANTS had the ability to pay these employees these
14 wages; however, DEFENDANTS put practices in place which resulted in the failure to pay Plaintiff
15 and other employees their owed wages. For example, at times from August 31, 2016 to the present,
16 DEFENDANTS would regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an
17 automatic deduction of 30 minutes intended to represent time take for a meal break and at times would
18 schedule Plaintiff to work 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended
19 to represent time taken for a meal break. DEFENDANTS would pay wages to Plaintiff and other
20 similarly situated employees for scheduled work times, i.e., 8 hours when scheduled from 7:00 a.m.
21 to 3:30 p.m. and 10 hours when scheduled to work from 7:00 a.m. to 5:30 p.m. However, this did not
22 provide Plaintiff and other similarly situated employees with wages for all hours the employees
23 worked. At times from August 31, 2016 to the present, DEFENDANTS would regularly require
24 Plaintiff and other similarly situated employees to show up prior to their scheduled shift without
25 compensation of wages to engage in duties to prepare for the workday such as gathering tools to be
26 ready to immediately leave for their worksite after an exercise/safety meeting at the start of their shift.
27 At times from August 31, 2016 to the present, Plaintiff and other similarly situated employees would
28 work without wages beyond the scheduled end of their shift at 3:30 p.m. or 5:30 p.m. when finishing

1 up work at the last worksite, traveling back to the yard through traffic, and engaging in duties at the
2 yard to put away tools would run past the end of the employees' scheduled shift. At times from August
3 31, 2016 to the present, Plaintiff and other similarly situated employees would work without wages
4 when DEFENDANTS would deduct 30 minutes for meal periods from Plaintiff and other similarly
5 situated employees' scheduled shift (i.e., paying wages of 8 hours when scheduled from 7:00 a.m. to
6 3:30 p.m. and 10 hours when scheduled to work from 7:00 a.m. to 5:30 p.m.) when at times Plaintiff
7 and other similarly situated employees' meal periods were shorter than 30 minutes when they returned
8 to work. When these acts occurred, DEFENDANTS willfully failed to pay all wages earned because
9 DEFENDANTS were able to but never paid Plaintiff or other similarly situated employees with wages
10 at any rate (minimum wage, agreed rate, or overtime) for the time which Plaintiff and other similarly
11 situated employees were working before their scheduled shift, during shortened meal periods, or after
12 their scheduled shift.

13 49. For example, at times from August 31, 2016 to the present, DEFENDANTS would
14 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
15 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
16 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
17 a meal break. DEFENDANTS generally scheduled Plaintiff and other similarly situated employees
18 for one 30-minute meal from 12:00 p.m. to 12:30 p.m. for either the 7:00 a.m. to 3:30 p.m. shift or
19 the 7:00 a.m. to 5:30 p.m. shift. However, at times employees were engaged in work duties and
20 DEFENDANTS delayed Plaintiff and other similarly situated employees to 1:00 p.m. or later. This
21 violated California law because DEFENDANTS provided Plaintiff and other similarly situated
22 employees with their meal period after the end of their fifth hour of work which required the meal to
23 be provided to Plaintiff and other similarly situated employees by 12:59 p.m. for a scheduled shift
24 beginning at 7:00 a.m. and even earlier because Plaintiff and other similarly situated employees
25 regularly began their workday before 7:00 a.m. when DEFENDANTS required them to show up prior
26 to their scheduled shift to prepare for the workday such as gathering tools to be ready to immediately
27 leave for their worksite after an exercise/safety meeting at the start of their shift. As noted above,
28 when Plaintiff and other similarly situated employees were scheduled to work a 10-hour workday

1 from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal period), at times
2 their 10-hour workday was extended over 10-hours for reasons including but not limited to scheduling
3 or due to work performed prior to the shift such as gathering tools, when a meal break was shorter
4 than 30 minutes on that day, or when finishing up work at the last worksite, traveling back to the yard
5 through traffic, and engaging in duties at the yard to put away tools would run past the end of the
6 employees' scheduled shift. On those workdays, Plaintiff and other similarly situated employees were
7 entitled to a second meal period; however, DEFENDANTS' meal policy only provided for one meal
8 break generally from 12:00 p.m. to 12:30 p.m. Thus, on workdays Plaintiff and other similarly situated
9 employees worked over 10 hours, DEFENDANTS failed to provide a second meal period no later
10 than the end of the employees' 10th hour of work. When these acts occurred, DEFENDANTS
11 willfully failed to pay all wages earned because DEFENDANTS were able to but never paid the wages
12 owed for DEFENDANTS' failure to provide legally compliant meal periods.

13 50. For example, at times from August 31, 2016 to the present, DEFENDANTS would
14 regularly schedule Plaintiff to work from 7:00 a.m. to 3:30 p.m. with an automatic deduction of 30
15 minutes intended to represent time take for a meal break and at times would schedule Plaintiff to work
16 7:00 a.m. to 5:30 p.m. with an automatic deduction of 30 minutes intended to represent time taken for
17 a meal break. DEFENDANTS failed to implement a legally compliant rest period policy. When
18 Plaintiff and other similarly situated employees were scheduled for an 8-hour day, e.g., from 7:00
19 a.m. to 3:30 p.m., DEFENDANTS would only provide Plaintiff and other similarly situated
20 employees with one rest break. This violates California law which entitles employees to two rest
21 breaks a day when employees work over 6 hours in a workday. In addition, as noted above,
22 DEFENDANTS often failed to provide the employees with this rest break. When Plaintiff and other
23 similarly situated employees were scheduled for a 10-hour day, e.g., from 7:00 a.m. to 5:30 p.m.,
24 DEFENDANTS would only provide Plaintiff and other similarly situated employees with two rest
25 breaks. As noted above, when Plaintiff and other similarly situated employees were scheduled to work
26 a 10-hour workday from 7:00 a.m. to 5:30 p.m. (with automatic deduction of 30-minutes for the meal
27 period), at times their 10-hour workday was extended over 10-hours for reasons including but not
28 limited to scheduling or due to work performed prior to the shift such as gathering tools, when a meal

1 break was shorter than 30 minutes on that day, or when finishing up work at the last worksite, traveling
2 back to the yard through traffic, and engaging in duties at the yard to put away tools would run past
3 the end of the employees' scheduled shift. On those workdays, Plaintiff and other similarly situated
4 employees were entitled to a third rest period; however, DEFENDANTS' only provided two rest
5 breaks and as noted above, at times DEFENDANTS failed to provide one or both of the rest breaks.
6 Thus, on workdays Plaintiff and other similarly situated employees worked over 10 hours,
7 DEFENDANTS failed to provide two or three rest periods as required by California law. When these
8 acts occurred, DEFENDANTS failed to willfully pay all wages earned because DEFENDANTS were
9 able to but never paid the wages owed for DEFENDANTS' failure to provide legally compliant rest
10 periods.

11 51. For example, DEFENDANTS had a policy in place which required employees to pay
12 for lost or damaged company property, including but not limited to company tools, by requiring them
13 to pay for or by deducting money from their wages to pay for lost or damaged company tools. Twice
14 in 2020 with the last time in July 2020, DEFENDANTS deducted \$350 from Plaintiff's wages each
15 time for lost tools and did not reimburse him this amount. When these acts occurred, DEFENDANTS
16 willfully failed to pay wages owed to Plaintiff and other similarly situated employees who had their
17 wages wrongfully withheld because DEFENDANTS were able to but never paid Plaintiff or similarly
18 situated employees back their wrongfully withheld wages.

19 52. As a result of the foregoing, DEFENDANTS failed to timely pay non-exempt
20 employees after each employee's termination and/or resignation in violation of Labor Code sections
21 201 and 202.

22 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

23 53. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
24 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

25 A. **Minimum Wage Class:** All current and former non-exempt employees
26 Defendants employed in California at any time within the four years prior to the filing of the initial
27 complaint in this action and through the date notice is mailed to a certified class who were working
28 or under control of Defendants for time periods Defendants did not pay wages at the legal minimum

1 wage rate.

2 **B. Overtime Class:** All current and former non-exempt employees Defendants
3 employed in California at any time within the four years prior to the filing of the initial complaint in
4 this action and through the date notice is mailed to a certified class who were working or under control
5 of Defendants during time periods they had already worked sufficient hours to entitle them to
6 overtime and Defendants did not pay wages for that time.

7 **C. Meal Period Class:** All current and former non-exempt employees Defendants
8 employed in California at any time within the four years prior to the filing of the initial complaint in
9 this action and through the date notice is mailed to a certified class who did not receive legally
10 compliant meal periods during which they were relieved of all duties and control of Defendants for
11 30 minutes for each five hours of worked provided prior to the end of each work period of five hours,
12 including a second meal period prior to the tenth hour of work when employees worked more than
13 ten hours.

14 **D. Rest Period Class:** All current and former non-exempt employees Defendants
15 employed in California at any time within the four years prior to the filing of the initial complaint in
16 this action and through the date notice is mailed to a certified class who did not receive wages to
17 compensate employees for workdays Defendants failed to provide legally compliant rest periods that
18 the employees were relieved of all duties and control by Defendants.

19 **E. Reimbursement Class:** All current and former non-exempt employees
20 Defendants employed in California at any time within the four years prior to the filing of the initial
21 complaint in this action and through the date notice is mailed to a certified class who did not receive
22 reimbursement for charges for cash shortages, breakage, or loss of equipment and necessary
23 expenditures or losses incurred by the employee in direct consequence of discharge of his or her duties
24 or obedience of directions of the employer.

25 **F. Wage Deduction Class:** All current and former non-exempt employees
26 Defendants employed in California at any time within the four years prior to the filing of the initial
27 complaint in this action and through the date notice is mailed to a certified class who had part of their
28 wages reduced by Defendants for cash shortages, breakage, or loss of equipment and necessary

1 expenditures or losses incurred by the employee in direct consequence of discharge of his or her duties
2 or obedience of directions of the employer.

3 **G. Wage Statement Class:** All current and former non-exempt employees
4 Defendants employed in California at any time within the one year prior to the filing of the initial
5 complaint in this action and through the date notice is mailed to a certified class who did not receive
6 complete and accurate itemized statements.

7 **H. Earned Wages Class:** All current and former non-exempt employees
8 Defendants employed in California at any time within the one year prior to the filing of the initial
9 complaint in this action and through the date notice is mailed to a certified class who did not receive
10 timely payment of earned wages within the statutory time period during their employment.

11 **I. Waiting Time Class:** All former non-exempt employees employed by
12 Defendants in California at any time within the three years prior to the filing of the initial complaint
13 in this action and through the date notice is mailed to a certified class whose employment ended and
14 they did not receive payment of all unpaid wages within the statutory time period after separation of
15 employment.

16 **J. California Class:** All aforementioned classes are here collectively referred to
17 as the "California Class".

18 54. There is a well-defined community of interest in the litigation and the classes are
19 ascertainable:

20 **A. Numerosity:** While the exact number of class members in each class is
21 unknown to plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
22 all members is impractical under the circumstances of this case.

23 **B. Common Questions Predominate:** Common questions of law and fact exist
24 as to all members of the Plaintiff classes and predominate over any questions that affect only
25 individual members of each class. The common questions of law and fact include, but are not limited
26 to:

27 i. Whether Defendants failed to pay minimum wage or overtime to the
28 Minimum Wage Class and Overtime Class by not paying employees for all "hours worked";

1 ii. Whether Defendants failed to provide legally required and legally
2 compliant meal breaks or owed meal period premiums to the Meal Period Class;

3 iii. Whether Defendants failed to provide all legally required and legally
4 compliant rest breaks or owed rest period premiums to the Rest Period Class;

5 iv. Whether Defendants violated California law by failing to reimburse the
6 Reimbursement Class for charges for cash shortages, breakage, or loss of equipment and necessary
7 expenditures or losses incurred by the employee in direct consequence of discharge of his or her duties
8 or obedience of directions of the employer.

9 v. Whether Defendants violated California law by reducing the wages of
10 the Wage Deduction Class for charges for cash shortages, breakage, or loss of equipment and
11 necessary expenditures or losses incurred by the employee in direct consequence of discharge of his
12 or her duties or obedience of directions of the employer.

13 vi. Whether Defendants failed to provide the Wage Statement Class
14 Members with accurate and complete itemized wage statements;

15 vii. Whether Defendants failed to timely provide the Earned Wages Class
16 with all earned wages within the statutory time periods during their employment;

17 viii. Whether Defendants failed to provide the Waiting Time Class with all
18 unpaid wages within the statutory time periods each week and/or following separation of
19 employment;

20 ix. Whether Defendants committed unlawful business acts or practices
21 within the meaning of Business and Professions Code section 17200 *et seq.*;

22 x. Whether Class Members are entitled to unpaid wages, penalties,
23 interest, fees and other relief in conjunction with his claims; and

24 xi. Whether, as a consequence of Defendant's unlawful conduct, the Class
25 Members are entitled to restitution, and/or equitable relief.

26 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
27 each of the classes. Plaintiff and members of the Minimum Wage and Overtime Classes sustained
28 damages and/or loss of vested wages based on Defendants' failure to pay wages for all "hours

1 worked.” Plaintiff and members of the Meal Period and Rest Period Classes sustained damages and/or
2 loss of vested wages based on Defendants' failure to provide wages for workdays Defendants failed
3 to provide all legally compliant meal periods and rest periods. Plaintiff and members of the
4 Reimbursement Class sustained damages based on Defendant’s failure to reimburse employees for
5 losses incurred by the Reimbursement Class for cash shortages, breakage, or loss of equipment and
6 necessary expenditures or losses incurred by the employee in direct consequence of discharge of his
7 or her duties or obedience of directions of the employer. Plaintiff and members of the Wage Reduction
8 Class sustained damages based on Defendant’s reduction of their wages for cash shortages, breakage,
9 or loss of equipment and necessary expenditures or losses incurred by the employee in direct
10 consequence of discharge of his or her duties or obedience of directions of the employer. Plaintiff and
11 the members of the Wage Statement Class sustained damages arising out of Defendants’ failure to
12 furnish them with accurate and/or complete itemized wage statements in compliance with Labor Code
13 section 226. Plaintiff and the members of the Earned Wages Class and/or Waiting Time Class
14 sustained damages arising out of Defendants’ failure to timely provide all earned wages during
15 employment and/or unpaid and final wages due upon the end of their employment.

16 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
17 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
18 other class members. Plaintiff's Counsel is qualified to conduct the litigation.

19 E. **Superiority:** A class action is superior to other available means for the fair and
20 efficient adjudication of this controversy. Because individual joinder of all members of each class is
21 impractical, class action treatment will permit a large number of similarly situated persons to
22 prosecute their common claims in a single forum simultaneously, efficiently, and without the
23 unnecessary duplication of effort and expense that numerous individual actions would engender. The
24 expenses and burdens of individual litigation would make it difficult or impossible for individual
25 members of each class to redress the wrongs done to them, while important public interests will be
26 served by addressing the matter as a class action. The cost to and burden on the court system of
27 adjudication of individualized litigation would be substantial, and substantially more than the costs
28 and burdens of a class action. Individualized litigation would also present the potential for inconsistent

1 or contradictory judgments.

2 F. **Public Policy Consideration:** Employers throughout the state violate wage
3 and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect
4 retaliation. Former employees are fearful of bringing actions because they perceive their former
5 employers can blacklist them in their future endeavors through negative references and by other
6 means. Class actions provide the class members who are not named in the complaint with a type of
7 anonymity that allows for vindication of their rights.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGE OR OVERTIME WAGES FOR ALL HOURS**
10 **WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1197, 1198, AND**
11 **THE WAGE ORDERS**

12 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
13 **Overtime Regular Rate Class)**

14 55. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
15 by reference.

16 56. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
17 Wage Class and Overtime Class were non-exempt employees of DEFENDANTS in California and
18 covered by California Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders.

19 57. In California, an employer is required to pay an employee for all “hours worked”
20 which includes all time that an employee is under control of the employer and including all time that
21 the employee is suffered and permitted to work whether or not the employee is required to work. This
22 includes time an employee is required to be present at a certain location whether or not the employee
23 is working, including meal times. (*Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833,
24 840-842, *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.) Labor Code sections 1194,
25 1197 and the Wage Orders require that an employer compensate employees for “hours worked” at
26 least at a minimum wage rate of pay as established by the wage orders. Labor Code sections 510,
27 1194 and the Wage Orders require that an employer compensate employees for “hours worked” at a
28 higher rate of pay when an employee works over a certain number of hours: 1.5 times the regular rate

1 of pay for hours worked over 8 hours up to 12 hours in a workday, over 40 hours in a workweek, or
2 up to 8 hours on a seventh day of work in a workweek or 2 times the regular rate of pay for hours
3 worked over 12 hours in a workday.

4 58. At times during the four years prior to the filing of the Complaint, DEFENDANTS
5 used policies and procedures (e.g., failure to pay for off the clock time and paying or recording only
6 scheduled shift time) which did not provide wages to Plaintiff and other similarly situated California
7 employees for all time DEFENDANTS controlled the employees and/or suffered or permitted the
8 employees to work. For example, this unpaid time included but is not limited to: the time Plaintiff
9 and other similarly situated employees were required to show up before their scheduled shift to
10 perform duties such as gathering tools; the time after the employees shift when work, traveling back
11 to the yard, and engaging in duties at the yard to put away tools would run past the end of the
12 employees' scheduled shift; and the time employees were engaged in work or were under control of
13 DEFENDANTS during the 30 minutes' time DEFENDANTS deducted from Plaintiff and other
14 similarly situated employees' meal periods even when Plaintiff and other similarly situated employees
15 received a meal period of less than 30 minutes or did not receive a meal period and were working
16 during this unpaid time. In addition, at times Plaintiff and other warehouse employees worked
17 overtime consisting of hours worked in excess of 8 up to 12 hours in a workday, over 40 hours in a
18 workweek, up to 8 hours on any seventh consecutive day in a workweek, hours worked in excess of
19 12 hours in a workday, or over 8 hours on any seventh consecutive day in a workweek. To the extent
20 the unpaid time occurred during these overtime hours or caused worked hours for the day or week to
21 exceed the threshold for overtime hours, DEFENDANTS did not pay additional wages at an overtime
22 rate to the employees.

23 59. DEFENDANTS' policies and procedures were applied to all non-exempt employees
24 in California at times during the four years prior to the filing of the Complaint and resulted in non-
25 exempt employees working time which was not compensated any wages in violation of Labor Code
26 sections 510, 1194, 1197, 1198, and the Wage Orders.

27 60. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum
28 Wage Class and Overtime Class have suffered damages in an amount subject to proof, to the extent

1 that they were not paid minimum wage for all hours worked or overtime wages for all overtime hours
2 worked.

3 61. Pursuant to California Labor Code sections 510, 1194, 1197, 1198 and the Wage
4 Orders, Plaintiff and the Minimum Wage Class and Overtime Class are entitled to recover unpaid
5 wages at the applicable minimum wage rate plus liquidated damages, applicable overtime rate,
6 interest thereon, and attorneys' fees and costs.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT**
9 **MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 226.7, 512, 1198 AND**
10 **THE WAGE ORDERS**

11 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
12 **Meal Period Class)**

13 62. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
14 by reference.

15 63. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
16 Class were non-exempt employees of Defendants in warehouses in California and covered by
17 California Labor Code sections 226.7, 512, 1198, and the Wage Orders. California law requires an
18 employer to provide an employee an uninterrupted meal period of no less than 30-minutes before the
19 end of a 5 hour work period during which employees are relieved of all duties. (Lab. Code §§226.7,
20 512, 1198; Wage Orders, subd. 11.) If the employee is not relieved of all duties during a 30 minute
21 meal period, the meal period is considered "on duty" and the entire meal period is counted as time
22 worked. (Wage Orders, subd. 11.) If an employee is not free to leave the work place during a meal
23 period, the employee is not relieved of all duties during the meal period and is subject to the control
24 of the employer and does not comply with the requirement of an employee being relieved of all duties
25 during their meal. (*Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968.) Further,
26 an employer cannot impede or discourage an employee from taking a meal period off premises and
27 which they are relieved of all duties and control of the employer. (*Brinker v. Superior Court* (2012)
28 53 Cal.4th 1004, 1039.) If an employer fails to provide an employee a meal period in accordance with

1 the law, the employer must pay the employee one hour of pay at the employee's regular rate of
2 compensation for each work day that a legally required meal period was not provided or was not duty
3 free. (*Id.*)

4 64. At times, Plaintiff and other current and former employees worked shifts in excess of
5 five hours, six hours, or ten hours and did not receive a meal periods or timely meal periods for each
6 five hour period of work. DEFENDANTS employed policies and procedures which failed to provide
7 Plaintiff and other employees with uninterrupted duty free 30 minute meal periods for each five hours
8 worked and/or failed to provide timely meal periods. At times within the four years prior to the filing
9 of this notice, DEFENDANTS provided Plaintiff and other employees with meal periods which were
10 shorter than 30 minutes or occurred after the 5th hour of work. In addition, DEFENDANTS only
11 provided at most one meal period per day regardless of the number of hours the employees' worked.
12 At times, Plaintiff and other employees would work longer than 10 hours in a day, but
13 DEFENDANTS did not provide them a second meal period.

14 65. DEFENDANTS also failed to pay employees one hour of pay at their regular rate of
15 pay for each workday Plaintiff and similarly situated employees did not receive all legally required
16 and legally compliant meal periods. DEFENDANTS lacked a policy and procedure for compensating
17 employees with premium wages when they did not receive all legally required and legally compliant
18 meal periods. This practice resulted in Plaintiff and all other similarly situated employees working
19 not receiving wages to compensate them for workdays which DEFENDANTS did not provide them
20 with all legally required and legally compliant meal periods in compliance with California law.

21 66. Because DEFENDANTS failed to afford employees meal periods in compliance with
22 the law, DEFENDANTS are liable to Plaintiff and the Meal Period Class for one hour of additional
23 pay at the regular rate of compensation for each workday that DEFENDANTS did not provide all
24 meal periods in compliance with the law.

25 67. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages and all other
26 relief allowable including a missed meal break wage for each workday the employees were not
27 provided with all legally required meal periods in compliance with the law.

28 **THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE ALL LEGALLY REQUIRED AND LEGALLY COMPLIANT
REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7, 1198, AND THE
WAGE ORDERS**

**(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the
Rest Period Class)**

68. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein by reference.

69. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period Class were non-exempt employees of DEFENDANTS in California and covered by California Labor Code section 226.7 and the Wage Orders.

70. California law states that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” (Wage Orders, subd. 12; see Lab. Code § 226.7.) Under California law, “[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work period. (Wage Orders, subd. 12.) In addition, if an employer requires employees to stay on the premises during the rest period, they are under control of the employer and they are not relieved of all duties in violation of California law. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 271.) If an employer fails to provide an employee a timely and legally compliant rest period, the employer must pay the employee one hour of pay at the employee’s regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (Wage Orders, subd. 12.)

1 71. At times, DEFENDANTS employed a policy and procedure which failed to
2 provide Plaintiff and other employees with legally compliant rest periods. At times, Plaintiff and other
3 employees worked over 3.5 hours in a workday but did not receive rest breaks. In addition,
4 DEFENDANTS' rest period policy failed to provide rest periods for every "major fraction thereof"
5 of four-hour work periods. Accordingly, pursuant to this policy DEFENDANTS did not provide for
6 a second rest period if employees worked more than 6 hours but less than 8 hours or a third rest period
7 if employees worked more than 10 hours but less than 12 hours. DEFENDANTS would only provide
8 at most one rest break (which was often not provided) when employees worked up to a ten-hour
9 workday. Thus, Plaintiff and other employees would work more than 6 hours up to 10 hours and
10 would not receive a second rest period. When Plaintiff and other employees worked 10 hours or more
11 DEFENDANTS at times would provide at most two rest periods (although the rest periods were often
12 not provided). Thus, employees would work over 10 hours but would not receive a third rest break.

13 72. DEFENDANTS also failed to pay Plaintiff and similarly situated employees one hour
14 of pay at their regular rate of pay for each workday Plaintiff and employees did not receive all timely
15 and legally compliant rest periods.

16 73. Because DEFENDANTS failed to afford employees rest periods in compliance with
17 the law, DEFENDANTS are liable to Plaintiff and the Rest Period Class for one hour of additional
18 pay at the regular rate of compensation for each workday that DEFENDANTS did not provide all rest
19 periods in compliance with the law.

20 74. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages and all other
21 relief allowable including a premium rest break wage for each workday the employees were not
22 provided with all rest periods in compliance with the law.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE EMPLOYEES AND/OR DEDUCTING FROM EMPLOYEES**
25 **WAGES WITHOUT REIMBURSEMENT FOR PAYMENTS FOR LOSSES OR**
26 **NECESSARY EXPENDITURES INCURRED BY THE EMPLOYEE IN DISCHARGE OF**
27 **THEIR DUTIES IN VIOLATION OF LABOR CODE SECTIONS 2802, 1198, OR 221 AND**
28 **THE WAGE ORDERS**

1 (Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC., and DOES 1 to 50 by the
2 Reimbursement Class and Wage Deduction Class)

3 75. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
4 by reference.

5 76. At all times relevant to this Complaint, Plaintiff and the members of the
6 Reimbursement Class and Wage Deduction Class were non-exempt employees of DEFENDANTS in
7 California and covered by California Labor Code section 2802, 1198, 221 and the Wage Orders.

8 77. Labor Code section 2802 requires employers to indemnify employees for all necessary
9 expenditures or losses incurred by the employee in direct consequence of discharging his or her duties
10 or obedience of directions of the employer. Labor Code section 1198 requires employers to comply
11 with the working conditions required by the Wage Orders and subdivision 8 of each of the Wage
12 Orders prohibits an employer from deducting from an employee's wages or from charging an
13 employee for negligent cash shortages, breakage, or loss of equipment. Labor Code section 221
14 prohibits employers from deducting any amounts from an employee's wages.

15 78. DEFENDANTS had a policy in place which required employees to pay for lost or
16 damaged company property, including but not limited to tools, by requiring them to pay or by
17 deducting money from their wages for lost or damages company property. For example, twice in 2020
18 with the last time in July 2020, DEFENDANTS deducted \$350 from Plaintiff's wages each time for
19 lost tools and did not reimburse him this amount.

20 79. These practices improperly charged PLAINTIFF and other similarly situated
21 employees with losses and/or negligent losses incurred as part of their employment without
22 reimbursement and violated Labor Code sections 2802, 1198, and 221.

23 80. Plaintiff, on behalf of himself and the Reimbursement Class and Wage Reduction
24 Class, seeks damages and all other relief allowable including any amounts paid or wages reduced to
25 pay for losses incurred by the employee in discharging their duties and/or negligent shortages,
26 breakage or loss of equipment, including but not limited to charging employees for damaged or lost
27 company property without reimbursement.

28 **FIFTH CAUSE OF ACTION**

1 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**
2 **VIOLATION OF LABOR CODE SECTION 226**
3 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
4 **Wage Statement Class)**

5 81. Plaintiff incorporates by reference all paragraphs above as if fully alleged herein.

6 82. At all relevant times, Plaintiff and the other members of the Wage Statement Class
7 were non-exempt employees of DEFENDANTS and covered by Labor Code Section 226.

8 83. Pursuant to Labor Code Section 226, subdivision (a), Plaintiff and the other members
9 of the class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
10 wage statement accurately stating the following:

11 (1) gross wages earned, (2) total hours worked by the employee, except
12 for any employee whose compensation is solely based on a salary and
13 who is exempt from payment of overtime under subdivision (a) of
14 Section 515 or any applicable order of the Industrial Welfare
15 Commission, (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4)
17 all deductions, provided that all deductions made on written orders of
18 the employee may be aggregated and shown as one item, (5) net wages
19 earned, (6) the inclusive dates of the period for which the employee is
20 paid, (7) the name of the employee and his or her social security
21 number, except that by January 1, 2008, only the last four digits of his
22 or her social security number or an employee identification number
23 other than a social security number may be shown on the itemized
24 statement, (8) the name and address of the legal entity that is the
25 employer, and (9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly
27 rate by the employee.

21 84. At times during the one year prior to the filing of the Complaint, DEFENDANTS did
22 not accurately state Plaintiff and other employees' gross wages earned, total hours worked, net wage
23 earned, and number of hours worked at each hourly rate by the employees. DEFENDANTS
24 inaccurately set forth this information because DEFENDANTS failed to account for the hours worked
25 and wages earned by employees prior to their scheduled shift, after their scheduled shift, or during
26 unpaid meal periods which were short or not received and employees were working. DEFENDANTS
27 also failed to account for and pay for meal and rest period premium wages for its failure to provide
28 legally compliant and all legally required meal and rest periods as described above in more detail.

1 Thus, the wage statements provided to employees were inaccurate because they did not include the
2 hours worked and wages earned by employees and/or meal and rest period premiums that should have
3 been paid.

4 85. DEFENDANTS' failure to provide Plaintiff and members of the Wage Statement Class
5 with accurate and complete wage statements was knowing and intentional. DEFENDANTS
6 knowingly and intentionally put in place practices which deprived employees of wages and resulted
7 in DEFENDANTS' knowing and intentional providing of inaccurate wage statements.

8 86. As a result of DEFENDANTS unlawful conduct, Plaintiff and members of the Class
9 have suffered injury in that the wage statements inaccurately stated and/or failed to state the
10 aforementioned items of information and Plaintiff and the members of the class could not promptly
11 and easily determine from the wage statement alone an accurate statement of: the gross wages earned,
12 the total hours worked, the net wages earned, and the applicable hourly rates in effect during the pay
13 period and corresponding number of hours worked at each hourly rate.

14 87. Pursuant to Labor Code Section 226(e), Plaintiff and members of the Wage Statement
15 Class are entitled to recover actual damages or fifty dollars for the initial pay period in which a
16 violation of Labor Code Section 226 occurred and one hundred dollars for each violation of Labor
17 Code Section 226 in a subsequent pay period, not to exceed an aggregate penalty of four thousand
18 dollars per employee.

19 88. Pursuant to Labor Code Section 226(g), Plaintiff and members of the Wage Statement
20 Class are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
21 Labor Code Section 226(a). Injunctive relief is warranted because DEFENDANTS continue to
22 provide currently employed members of the Class with inaccurate wage statements in violation of
23 Labor Code Section 226(a) and currently employed members of the Class have no adequate legal
24 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
25 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS comply
26 with Labor Code Section 226(a). (Lab. Code §226, subd. (h).)

27 89. Pursuant to Labor Code Sections 226(e) and 226(g), Plaintiff and members of the Class
28 are entitled to recover the full amount of penalties due under Labor Code Section 226(e), reasonable

1 attorney fees, and costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**
4 **VIOLATION OF LABOR CODE SECTION 204**

5 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
6 **Earned Wages Class)**

7 90. Plaintiff incorporates all paragraphs above as if fully alleged herein.

8 91. At all relevant times, Plaintiff and the other members of the Earned Wages Class were
9 non-exempt employees of DEFENDANTS in California and covered by Labor Code Sections 204.

10 92. Labor Code section 204 requires that an employer pay employees their earned wages
11 timely during their employment. (Lab. Code §204 [requiring payment of wages earned between 1st
12 and 15th day between 16th and 26th day of month and wages earned between 16th and last day
13 between 1st and 10th day of following month].).

14 93. At times during the one year prior to the filing of the Complaint, DEFENDANTS failed
15 to pay Plaintiff and the Earned Wages Class with all wages earned as alleged above during their
16 employment and never paid these amounts after the employees separated employment from
17 DEFENDANTS. The unpaid wages included the unpaid minimum wage and overtime for all hours
18 worked, meal and rest period premium wages, wrongfully deducted wages, all as described in more
19 detail above. DEFENDANTS failure to pay these amounts violated Labor Code section 204.

20 94. Pursuant to Labor Code Section 204, Plaintiff and members of the Earned Wages Class
21 are entitled to penalties as set forth by Labor Code section 210.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY UNPAID WAGES DUE AT TIME OF SEPARATION OF**
24 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

25 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
26 **Waiting Time Class)**

27 95. Plaintiff incorporates all paragraphs above as if fully alleged herein.

28 96. At all relevant times, Plaintiff and the other members of the Waiting Time Class were

1 non-exempt employees of DEFENDANTS in California and covered by Labor Code Sections 201 or
2 202. Plaintiff was terminated from his employment in approximately July 2020.

3 97. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of Waiting Time
4 Classes were entitled upon termination to timely payment of all wages earned and unpaid prior to
5 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to
6 discharge immediately upon termination. Employees who resigned were entitled to payment of all
7 wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if
8 they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid
9 prior to resignation at the time of resignation.

10 98. During the three years prior to the filing of the Complaint, DEFENDANTS failed to
11 pay Plaintiff and the Waiting Time Class with all wages as alleged above (e.g., unpaid minimum wage
12 and overtime for all hours worked, meal and rest period premium wages, wrongfully deducted wages)
13 during their employment and never paid these amounts after the employees separated employment
14 from DEFENDANTS. DEFENDANTS failure to pay these amounts violated Labor Code sections
15 201 and 202.

16 99. DEFENDANTS' failure to pay Plaintiff and members of the Waiting Time Class all
17 unpaid wages prior to termination or within 72 hours of resignation in accordance with Labor Code
18 Sections 201 or 202 was willful. DEFENDANTS had the ability to pay all wages earned by hourly
19 workers prior to termination or within 72 hours of resignation in accordance with Labor Code Sections
20 201 or 202, but intentionally adopted policies or practices incompatible with the requirements of
21 Labor Code Sections 201 or 202. DEFENDANTS' practices are described in further detail above.
22 When DEFENDANTS failed to timely pay hourly workers all unpaid wages earned at the time of
23 termination or within 72 hours of resignation, DEFENDANTS knew what they were doing and
24 intended to do what they did.

25 100. Pursuant to Labor Code Section 201 or 202, Plaintiff and members of the Waiting
26 Time Class are entitled to all wages earned prior to termination that DEFENDANTS did not pay
27 them.
28

1 101. Pursuant to Labor Code Section 203, Plaintiff and members of the Waiting Time
2 Classes are entitled to continuation of their wages, from the day their earned and unpaid wages were
3 due upon termination until paid, up to a maximum of 30 days.

4 102. Pursuant to Labor Code Sections Plaintiff and members of the Waiting Time Class are
5 entitled to recover the full amount of their unpaid wages, continuation wages under Section 203, and
6 interest thereon.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS**

9 **CODE SECTION 17200, *et seq.***

10 **(Against DEFENDANTS MOUNTAIN F. ENTERPRISES, INC. and DOES 1 to 50 by the**
11 **California Class)**

12 103. Plaintiff incorporates all paragraphs above as if fully alleged herein.

13 104. The unlawful conduct of Defendants alleged herein constitutes unfair competition
14 within the meaning of Business and Professions Code Section 17200. This unfair conduct includes
15 DEFENDANTS' use of policies and procedures which resulted in DEFENDANTS' failure to provide:
16 payment of wages (at applicable minimum wage or overtime rate) for all hours worked; payment of
17 premium wages for DEFENDANTS' failure to provide all legally required and legally compliant
18 meal and rest breaks; failure to reimburse employees or improper reduction of wages for losses
19 incurred by the employee in discharging their duties and/or negligent shortages, breakage or loss of
20 equipment, including but not limited to charging employees for damaged or lost company property
21 without reimbursement; complete and accurate wage statements; timely payment of earned wages
22 during employment, and timely payment of final wages, all as described in more detail above. Due to
23 DEFENDANTS' unfair and unlawful business practices in violation of the Labor Code,
24 DEFENDANTS have gained a competitive advantage over other comparable companies doing
25 business in the State of California that comply with their obligations to provide their employees with:
26 payment of wages for all hours worked, all legally required and legally compliant meal periods or
27 meal period premium wages, all legally required and legally compliant rest periods or rest period
28 premium wages, reimbursement for all legally reimbursable amounts, all wages without improper

1 reductions for legally impermissible amounts, accurate and complete wage statements, and timely
2 payment of earned wages during employment and final wages.

3 105. As a result of DEFENDANTS' unfair competition as alleged herein, Plaintiff and
4 members of the California Class have suffered injury in fact and lost money or property, as described
5 in more detail above.

6 106. Pursuant to Business and Professions Code Section 17203, Plaintiff and members of
7 the California Class are entitled to restitution of all unpaid wages (unpaid minimum wage and
8 overtime for all hours worked, meal and rest period premium wages, wrongfully deducted wages) and
9 other monies rightfully belonging to them that DEFENDANTS failed to pay them and wrongfully
10 retained by means of their unlawful and unfair business practices. Plaintiff also seeks an injunction
11 against DEFENDANTS on behalf of the California Class enjoining them, and any and all persons
12 acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set
13 forth herein.

14 **NINTH CAUSE OF ACTION**

15 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
16 **2004, LABOR CODE SECTION 2698, *et seq.***

17 **(Against all Defendants)**

18 107. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

19 108. During the period beginning one-year period preceding the filing of notice with the
20 LWDA, Defendants violated Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512,
21 1194, 1197, 1198, and 2802.

22 109. Specifically, Defendants have committed the following violations of California Labor
23 Code:

24 110. **Failure to pay minimum wage, earned rate, and/or overtime wage, if applicable,**
25 **to non-exempt employees for all hours worked:** DEFENDANTS employed Plaintiff and other
26 employees in California as non-exempt, hourly employees. At times from August 26, 2019 to the
27 present and ongoing, DEFENDANTS used policies and procedures of failing to pay for off the clock
28 time and only paying scheduled shift time which resulted in DEFENDANTS not paying wages to

1 Plaintiff and other non-exempt employees for compensable time the employees were subject to
2 control of DEFENDANTS and/or were suffered and permitted to work. This unpaid time included
3 but is not limited to the time Plaintiff and other aggrieved employees were required to show up before
4 their scheduled shift to perform duties such as gathering tools. This time also included time after the
5 employees shift when work, traveling back to the yard, and engaging in duties at the yard to put away
6 tools would run past the end of their scheduled shift. This time also included the 30 minutes' time
7 deducted for Plaintiff and other aggrieved employees' meal periods even when they received a meal
8 period of less than 30 minutes or did not receive a meal period. DEFENDANTS' practice of only
9 paying employees for their scheduled shift resulted in Plaintiff and other aggrieved n non-exempt
10 employees working time which DEFENDANTS failed to provide wages at a minimum wage rate,
11 overtime rate if applicable, and earned wage rate in violation of Labor Code sections 204, 510, 1194,
12 1197, 1198, and the Wage Orders.

13 **111. Failure to provide all legally required and legally compliant meal breaks to non-**
14 **exempt employees:** Despite that California law requires employers to provide employees with meal
15 periods when an employee's work shift is a minimum of five hours for each five hours worked;
16 DEFENDANTS employed policies and procedures which failed to provide Plaintiff and other
17 employees with uninterrupted duty free 30 minute meal periods for each five hours worked and/or
18 failed to provide timely meal periods. At times from August 26, 2019 to the present and ongoing,
19 DEFENDANTS provided Plaintiff and other employees with meal periods which were shorter than
20 30 minutes or occurred after the 5th hour of work. In addition, DEFENDANTS only provided at most
21 one meal period per day regardless of the number of hours the employees' worked. At times, Plaintiff
22 and other employees would work longer than 10 hours in a day, but DEFENDANTS did not provide
23 them a second meal period. These practices resulted in Plaintiff and other employees not receiving
24 proper meal periods and/or wages to compensate them for workdays which DEFENDANTS did not
25 provide them with all legally required and legally compliant meal periods in violation of Labor Code
26 sections 226.7, 512, 1198 and the Wage Orders.

27 **112. Failure to provide all legally required and legally compliant rest breaks to non-**
28 **exempt employees:** DEFENDANTS employed a policy and procedure which failed to provide

1 Plaintiff and other employees with legally compliant rest periods. At times, Plaintiff and other
2 employees worked over 3.5 hours in a workday but did not receive rest breaks. In addition,
3 DEFENDANTS' rest period policy failed to provide rest periods for every "major fraction thereof"
4 of four-hour work periods. Accordingly, pursuant to this policy DEFENDANTS did not provide for
5 a second rest period if employees worked more than 6 hours but less than 8 hours or a third rest period
6 if employees worked more than 10 hours but less than 12 hours. DEFENDANTS would only provide
7 at most one rest break (which was often not provided) when employees worked up to a ten-hour
8 workday. Thus, Plaintiff and other employees would work more than 6 hours up to 10 hours and
9 would not receive a second rest period. When Plaintiff and other employees worked 10 hours or more,
10 DEFENDANTS at times would provide at most two rest periods (although the rest periods were often
11 not provided). Thus, employees would work over 10 hours but would not receive a third rest break.
12 DEFENDANTS' rest period practices and failure to adopt a legally compliant rest period policy
13 resulted in Plaintiff and all other non-exempt employees not receiving legally compliant rest breaks
14 or wages to compensate them for workdays which DEFENDANTS did not provide them with legally
15 compliant rest breaks in violation of Labor Code sections 226.7, 1198, and the Wage Orders.

16 **113. Violations of Labor Code sections 2802, 1198, and/or 221:** DEFENDANTS had a
17 policy in place which required employees to pay for lost or damaged company property. For example,
18 twice in 2020 with the last time in July 2020, DEFENDANTS deducted \$350 from Plaintiff's wages
19 each time for lost tools and did not reimburse him this amount. This practice improperly charged
20 Plaintiff and other aggrieved employees with losses incurred as part of their employment without
21 reimbursement out of wages owed and violated Labor Code sections 2802, 1198, and 221.

22 **114. Failure to Keep Accurate Records:** California law requires an employer to keep
23 accurate records showing when employees began and ended each work period, meal periods, and total
24 daily hours worked. As noted above, as a result of DEFENDANTS' failure to record time prior or
25 after Plaintiff and other employees' scheduled shift spent engaged in duties (e.g., gathering tools,
26 putting away tools, traveling back to the yard) and to accurately record meal periods (e.g., when
27 employees' meal periods were shorter than 30 minutes and they returned to work), DEFENDANTS
28 failed to keep accurate records of Plaintiff and other aggrieved employees' hours worked daily, time

1 records showing when employees began and ended each work period, meal periods, and total daily
2 hours worked in violation of Labor Code sections 1174, 1198, and the Wage Orders.

3 **115. Failure to Provide Complete and Accurate Itemized Statements (“Pay Stubs”) to**
4 **Non-exempt Employees:** California law requires an employer to provide employees at the time of
5 payment of their wages an accurate itemized statement accurately listing all information required in
6 Labor Code section 226, subdivision (a). DEFENDANTS failed to provide accurate itemized
7 statements to Plaintiff and other non-exempt employees. As a result of the conduct alleged above in
8 more detail (e.g., failure to pay wages for all hours worked and failure to pay meal and rest period
9 wages), the wage statements DEFENDANTS provided to Plaintiff and other aggrieved employees
10 were inadequate because they did not state the accurate amount of gross wages earned, total hours
11 worked, net wages earned, and number of hours worked at each rate in effect during the pay period.
12 Defendant applied these policies and procedures to Plaintiff and other aggrieved employees in
13 California which resulted in Defendant failing to provide complete and accurate wage statements to
14 Plaintiff and other employees in violation of Labor Code section 226.

15 **116. Failure to Timely Pay Former California Non-Exempt Employees All Wages**
16 **During Their Employment and Due at Time of Termination/Resignation:** Labor Code section
17 204 requires that an employer pay employees their earned wages timely during their employment.
18 (Lab. Code §204 [requiring payment of wages earned between 1st and 15th day between 16th and
19 26th day of month and wages earned between 16th and last day between 1st and 10th day of following
20 month].) In addition, an employer is required to pay all unpaid wages timely after an employee’s
21 employment ends. The wages are due immediately upon termination (Lab. Code §201) or within 72
22 hours of resignation (Lab. Code §202). Because DEFENDANTS failed to pay Plaintiff and other non-
23 exempt employees with all wages (including unpaid minimum wage, earned wages, and overtime
24 wages and unpaid premium wages for missed meal and/or rest breaks all as described in more detail
25 above) during their employment and never paid these amounts after separation of employment;
26 DEFENDANTS failed to timely pay the employees these unpaid wages after each employee’s
27 termination and/or resignation. As a result, DEFENDANTS violated Labor Code section 204 by not
28 paying Plaintiff and other aggrieved employees earned wages timely during his employment and

1 violated Labor Code sections 201 and 202 by failing to timely pay Plaintiff and other aggrieved
2 employees all wages following separation of employment.

3 117. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
4 on behalf of himself and other current or former employees, to bring a civil action to recover civil
5 penalties against all Defendants pursuant to the procedures specified in Labor Code section 2699.3.

6 118. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
7 section 2699.3. Plaintiff filed notice with the Labor and Workforce Development Agency ("LWDA")
8 on August 26, 2020 and provided notice to Defendant by certified mail which provided notice of the
9 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
10 to support the alleged violations.

11 119. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
12 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
13 within 65 days of the date of the complainant's written notice and/or Defendants may attempt to cure
14 for certain violations. The LWDA failed to provide the parties notice within 65 days of the date of
15 Plaintiff's letter that the LWDA intends to investigate Plaintiff's claims and/or Defendants failed to
16 cure any of the alleged violations which could have been cured.

17 120. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks, within the one year
18 prior to the mailing of the LWDA letter, civil penalties for DEFENDANTS' violations of Labor Code
19 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 in the following amounts:

20 a. For violations of Labor Code sections 201, 202, 203, 226.7, and 512; one
21 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
22 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
23 [penalty amounts established by Labor Code section 2699(f)(2)].

24 b. For violation of Labor Code section 204; one hundred (\$100) for each
25 aggrieved employee for each pay period for the initial violation, and for each subsequent violation,
26 two hundred (\$200) for each underpaid employee for each pay period plus 25 percent of any amount
27 unlawfully withheld [penalty amounts established by Labor Code section 210].

28 c. For violations of Labor Code section 221; one hundred (\$100) for each

1 aggrieved employee for each initial violation, and for each subsequent violation, or any willful or
2 intentional violation, two hundred (\$200) for each failure to pay each employee, plus 25 percent of
3 the amount unlawfully withheld [penalty amounts established by Labor Code section 225.5].

4 d. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for
5 each aggrieved employee for each pay period for the in any initial citation, and for each subsequent
6 violation in a subsequent citation, one thousand dollars (\$1000) for each underpaid employee for each
7 pay period in a subsequent citation [penalty amounts established by Labor Code section 226.3].

8 e. For violations of Labor Code section 510, fifty dollars (\$50) for each aggrieved
9 employee for each pay period for the initial violation, and for each subsequent violation, one hundred
10 dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by
11 Labor Code section 558].

12 f. For violations of Labor Code section 1194, 1197, and 2802, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each
14 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
15 period [penalty amounts established by Labor Code section 1197.1].

16 121. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable
17 attorney's fees and costs in connection with his claims for civil penalties

18
19 **PRAYER FOR RELIEF**

20 **WHEREFORE, PLAINTIFF, ON HER BEHALF AND ON BEHALF OF THOSE**
21 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

22
23 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, AND EIGHTH**
24 **CAUSES OF ACTION:**

25 1. That the Court determine that this action may be maintained as a class action (for the
26 entire California Class and/or any and all of the specified sub-classes) pursuant to Code of Civil
27 Procedure section 382 and any other applicable law;

28 2. That the named Plaintiff be designated as class representative for the California Class

1 (and all sub-classes thereof);

2 3. A declaratory judgment that the practices complained herein are unlawful; and,

3 4. An injunction against Defendants enjoining them, and any and all persons acting in
4 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
5 herein.

6 **ON THE FIRST CAUSE OF ACTION:**

7 1. That the Defendants be found to have violated the minimum wage provisions and
8 overtime provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and the
9 Minimum Wage Class and Overtime Wage Class;

10 2. For damages, according to proof, including unpaid wages during the relevant statute
11 of limitations subject to any permissible tolling;

12 3. For any and all legally applicable penalties during the relevant statute of limitations
13 subject to any permissible tolling;

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

15 5. For pre-judgment interest, including but not limited to that recoverable under
16 California Labor Code section 1194, and post-judgment interest;

17 6. For attorneys' fees and costs of suit, including but not limited to that recoverable under
18 California Labor Code section 1194; and,

19 7. For such and other further relief, in law and/or equity, as the Court deems just or
20 appropriate.

21 **ON THE SECOND CAUSE OF ACTION:**

22 1. That the Defendants be found to have violated the meal break provisions of the Labor
23 Code and the IWC Wages Orders as to the Plaintiff and the Meal Period Class;

24 2. For damages, according to proof, including unpaid wages;

25 3. For any and all legally applicable penalties;

26 4. For pre-judgment interest, including but not limited to that recoverable under
27 California Labor Code section 218.6, and post-judgment interest; and

28 5. For such and other further relief, in law and/or equity, as the Court deems just or

1 appropriate.

2 **ON THE THIRD CAUSE OF ACTION:**

- 3 1. That the Defendants be found to have violated the rest break provisions of the Labor
4 Code and the IWC Wages Orders as to the Plaintiff and the Rest Period Class;
- 5 2. For damages, according to proof, including unpaid wages;
- 6 3. For any and all legally applicable penalties;
- 7 4. For pre-judgment interest, including but not limited to that recoverable under
8 California Labor Code section 218.6, and post-judgment interest; and
- 9 5. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11 **ON THE FOURTH CAUSE OF ACTION:**

- 12 1. That the Defendants be found to have violated the reimbursement provisions and
13 impermissible reduction of wages or charges provisions of the Labor Code and the IWC Wages
14 Orders as to the Plaintiffs and the Reimbursement Class and/or Wage Reduction Class;
- 15 2. For damages, according to proof, including but not necessarily limited to costs and
16 losses and/or reduced wages associated with unreimbursed items which should have been reimbursed
17 and/or never charged to the employees;
- 18 3. For any and all legally applicable penalties;
- 19 4. For pre-judgment interest, including but not limited to that recoverable under
20 California Labor Code sections 2802, 218.6, and post-judgment interest;
- 21 5. For attorneys' fees and costs of suit, including but not limited to that recoverable under
22 California Labor Code sections 2802 and 218.5; and,
- 23 6. For such and other further relief, in law and/or equity, as the Court deems just or
24 appropriate

25 **ON THE FIFTH CAUSE OF ACTION:**

- 26 1. That the Defendants be found to have violated the provisions of the Labor Code
27 regarding proper itemized paystubs as to the Wage Statement Class;
- 28 2. For damages and/or penalties, according to proof, including damages and/or statutory

1 penalties under Labor Code section 226(e) and any other legally applicable damages or penalties;

2 3. For pre-judgment interest and post-judgment interest;

3 4. For attorneys' fees and costs of suit, including but not limited to that recoverable under
4 California Labor Code section 226(e); and,

5 5. For such and other further relief, in law and/or equity, as the Court deems just or
6 appropriate.

7 **ON THE SIXTH CAUSE OF ACTION:**

8 1. That the Defendants be found to have violated the provisions of the Labor Code
9 regarding payment of wages due during employment as to the Earned Wages Class;

10 2. For damages and/or penalties, according to proof, including damages and/or statutory
11 penalties under Labor Code section 210 and any other legally applicable damages or penalties during
12 the relevant statute of limitations subject to any permissible tolling;

13 3. For such and other further relief, in law and/or equity, as the Court deems just or
14 appropriate.

15 **ON THE SEVENTH CAUSE OF ACTION:**

16 1. That the Defendants be found to have violated the provisions of the Labor Code
17 regarding payment of wages due upon resignation or termination as to the Waiting Time Class;

18 2. For damages and/or penalties, according to proof, including damages and/or statutory
19 penalties under Labor Code section 203 and any other legally applicable damages or penalties during
20 the relevant statute of limitations subject to any permissible tolling;

21 3. For pre-judgment interest, including under California Labor Code section 218.6, and
22 post-judgment interest; and,

23 4. For such and other further relief, in law and/or equity, as the Court deems just or
24 appropriate.

25 **ON THE EIGHTH CAUSE OF ACTION:**

26 1. That the Defendants be found to have violated Business and Professions Code section
27 17200 for the conduct alleged herein as to all Classes;

28 2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and,

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE NINTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and current or former employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f), 210, 226, 226.3, 558, 1197.1, and 1198.5.

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: November 12, 2020

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
Joseph Lavi, Esq.
Jordan D. Bello, Esq.
Vincent Granberry, Esq.
Attorneys for PLAINTIFF
SANTIAGO ROSAS and Other Class Members

DEMAND FOR JURY TRIAL

PLAINTIFF SANTIAGO ROSAS demands a trial by jury for herself and the Class on all claims so triable.

1 Dated: November 12, 2020

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

2
3 By: 

4 Joseph Lavi, Esq.
5 Jordan D. Bello, Esq.
6 Vincent Granberry, Esq.
7 Attorneys for PLAINTIFF
8 SANTIAGO ROSAS and Other Class Members
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am an employee 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 8889 W. Olympic Blvd., Beverly Hills, California 90211.

On November 12, 2020, I served the foregoing document, described as: "**PLAINTIFF SANTIAGO ROSAS' FIRST AMENDED COMPLAINT**" on all interested parties in this action as follows:

Attorneys for Defendants:

Matthew J. Durket, Esq.

mjd.law@me.com

2201 Francisco Dr., Suite 140-272

El Dorado Hills, CA 95762

☒ (BY MAIL) As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California.

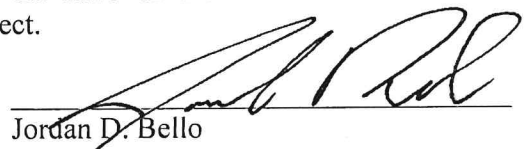
I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the attorney at the offices listed above.

☒ (BY ELECTRONIC SERVICE) I sent such document via electronic service.

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

Date: November 12, 2020


Jordan D. Bello