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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JACOB ORTEGA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

CARBON, INC., WHICH WILL DO
BUSINESS IN CALIFORNIA AS
CARBON3D, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20-CIV-04803

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Jacob Ortega, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”). This action seeks to
6 recover civil penalties, and any other available relief, on behalf of Plaintiff, the State of
7 California, and other current and former employees who worked for Defendants in California
8 as a non-exempt, hourly paid employee and who received at least one wage statement and
9 against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the
10 Labor Code or any provision regulating hours and days of work in the applicable Industrial
11 Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at
12 any time between one year prior to the filing of the pre-filing written notice to the Labor and
13 Workforce Development Agency (“LWDA”) in this case on August 24, 2020, until judgment
14 (“non-party Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action
15 does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Jacob Ortega is a resident of San Juan Bautista, in San Benito County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Special Projects
12 Technician from approximately June 2018 to November 2019. Plaintiff worked for
13 Defendants at their facility location in Redwood City, California. During his employment,
14 Plaintiff typically worked 12 hours or more per day, five (5) to six (6) days per week, from
15 6:00 p.m. to 6:00 a.m. By the end of his employment, Plaintiff was earning approximately
16 \$26.00 per hour. His job duties included, without limitation, processing 3D prints, mixing
17 chemicals, boxing shipments, and processing orders.

18 7. On information and belief, Defendants required some employees, including
19 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
20 their hire or during their employment. On further information and belief, Defendants’ dispute
21 resolution policy and/or arbitration agreement was and is both procedurally and substantively
22 unconscionable. Specifically, Defendants presented new hires with an At-Will Employment,
23 Confidential Information, Invention Assignment, and Arbitration Agreement (“Arbitration
24 Agreement”) during the onboarding process, which had to be reviewed and signed
25 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
26 several documents presented to new employees for signature during the orientation process,
27 including the Employee Handbook, among other documents. Also, employees did not have a
28 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was

1 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
2 they were hired, along with other on-boarding documents. Further, Defendants did not set
3 forth in the agreement or otherwise provide employees with the rules which will govern the
4 arbitration, instead forcing employees to seek this information out on their own ("I agree that
5 any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc.
6 ('JAMS'), pursuant to its employment arbitration rules and procedures (the 'JAMS RULES'),
7 which are available at <http://www.jamsadr.com/rules-employment-arbitration/> and from
8 Human Resources.").

9 8. CARBON, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS
10 CARBON3D, INC. was and is, upon information and belief, a Delaware limited liability
11 company, and at all times hereinafter mentioned, an employer whose employees are engaged
12 throughout this county and the State of California.

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

17 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of CARBON, INC., WHICH WILL DO
19 BUSINESS IN CALIFORNIA AS CARBON3D, INC. at all relevant times.

20 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, CARBON, INC.,
22 WHICH WILL DO BUSINESS IN CALIFORNIA AS CARBON3D, INC. and/or DOES 1
23 through 10 (collectively, "Defendants" or "CARBON"), each acting as the agent, employee,
24 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
25 and was acting within the course and scope of such agency, employment, joint venture, or
26 concerted activity with legal authority to act on the others' behalf. The acts of any and all
27 Defendants were in accordance with, and represent, the official policy of Defendants.

28 12. At all relevant times, Defendants, and each of them, ratified each and every act

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

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

7 **PAGA REPRESENTATIVE ALLEGATIONS**

8 14. Defendants manufacture 3D-printed polymer components for use by leading
9 brands in 3D printing throughout the United States. Upon information and belief, Defendants
10 maintain a single, centralized Human Resources (“HR”) department at their corporate
11 headquarters in Redwood City, California, which is responsible for the recruiting and hiring of
12 new employees, and communicating and implementing Defendants’ company-wide policies,
13 including timekeeping policies and meal and rest period policies, to employees throughout
14 California.

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

22 16. Upon information and belief, Defendants maintain a centralized Payroll
23 department at their corporate headquarters in Redwood City, California, which processes
24 payroll for all non-exempt, hourly paid employees working for Defendants at their various
25 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
26 Employees. Based upon information and belief, Defendants issue the same formatted wage
27 statements to all non-exempt, hourly paid employees in California, irrespective of their work
28 locations. Upon information and belief, Defendants process payroll for departing employees

1 in the same manner throughout the State of California, regardless of the manner in which each
2 employee's employment ends.

3 17. Defendants continue to employ non-exempt or hourly paid employees in
4 California.

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

9 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
10 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
11 were not recorded.

12 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive certain wages for overtime compensation and that they were not receiving certain
15 wages for overtime compensation.

16 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that other non-party Aggrieved Employees were entitled to be paid at a
18 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
19 all income derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or
20 other forms of compensation.

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

27 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
2 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
3 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
4 not provided with all meal periods or payment of one (1) additional hour of pay at their
5 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
6 period.

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

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

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

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

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

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of wages during their employment. In violation of the California Labor Code,
6 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, meal and rest period
8 premiums, and/or reporting time pay, within permissible time periods.

9 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 be paid reporting time pay when they reported to work for their scheduled shift but were put to
12 work for less than half of the regular schedule. In violation of the California Labor Code,
13 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
14 pay due.

15 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive reimbursement for all business-related expenses and costs they incurred during the
18 course and scope of their employment and that they did not receive reimbursement of
19 applicable business-related expenses and costs incurred.

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

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

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

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

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

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

- 13 (a) The aggrieved employee shall give written notice by online filing
14 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
15 to the employer of the specific provisions of the California Labor Code
16 alleged to have been violated, including the facts and theories to support
17 the alleged violations.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
22 employer and the aggrieved employee by certified mail that it does not
23 intend to investigate the alleged violation within sixty (60) calendar
24 days of the postmark date of the Employee’s Notice. Upon receipt of
25 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
26 five (65) calendar days of the postmark date of the Employee’s Notice,
27 the aggrieved employee may commence a civil action pursuant to
28 California Labor Code section 2699 to recover civil penalties in addition

1 to any other penalties to which the employee may be entitled.

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

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

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).

14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice. The employer shall
16 give written notice by certified mail within that period of time to the
17 aggrieved employee or representative and the agency if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the employee may commence a
21 civil action pursuant to Section 2699.

22 37. On August 24, 2020, Plaintiff provided written notice by online filing to the
23 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-803636-20. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants dated August 24, 2020, is attached hereto as
2 “Exhibit 1.”

3 38. As of the filing date of this complaint, over 65 days have passed since Plaintiff
4 sent the initial LWDA Notice described above, and the LWDA has not responded that it
5 intends to investigate Plaintiff’s claims, and Defendants have not cured the violations.

6 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
9 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

10 40. Labor Code section 558(a) provides “[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid” Labor
17 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
18 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
19 as a private attorney general, seeks assessment and collection of civil penalties under Labor
20 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
21 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
22 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
23 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
24 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
25 applicable IWC wage order.

26 41. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
28 Employees’ rights by violating various sections of the California Labor Code as set forth

1 above.

2 42. As set forth below, Defendants have violated numerous provisions of both the
3 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
4 Order.

5 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
6 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
7 private attorney general, seeks assessment and collection of civil penalties for himself, all
8 other non-party Aggrieved Employees, and the State of California against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
10 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

11 **FIRST CAUSE OF ACTION**

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

13 **(Against all Defendants)**

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

16 45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
18 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
19 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
20 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
21 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

22 46. Defendants’ conduct, as alleged herein, violates numerous sections of the
23 California Labor Code, including, but not limited to, the following:

- 24 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
25 wage order for Defendants’ failure to compensate Plaintiff and other
26 non-party Aggrieved Employees with all required overtime pay and
27 failure to properly calculate the overtime rates paid to other non-party
28 Aggrieved Employees, as set forth below;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other non-party Aggrieved Employees for all business expenses
2 necessarily incurred, as set forth below.

3 **FAILURE TO PAY OVERTIME**

4 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

14 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
16 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
17 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
18 hours in a workweek.

19 50. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
21 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
22 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
23 behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and
24 incentive pay.

25 51. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 52. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
5 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
6 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
7 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
8 not recorded.

9 53. First, on information and belief, Defendants had, and continue to have, a
10 company-wide policy and/or practice of strictly staffing its locations strictly based on the
11 labor hours or labor budget set by the corporate office. Defendants' use of a labor budget
12 resulted in chronic understaffing such that there were too few employees on duty to handle the
13 heavy workload, which included daily production quotas. Because Defendants did not employ
14 or staff an adequate number of employees to meet their productivity expectations and failed to
15 provide employees with adequate meal period coverage, Plaintiff and other non-party
16 Aggrieved Employees were assigned heavy workloads, which Defendants knew or should
17 have known could only be met by working additional hours. Plaintiff and other non-party
18 Aggrieved Employees missed meal periods and/or had meal periods cut short or interrupted in
19 order to handle their workloads and assist with production deadlines.

20 54. Additionally, Defendants failed to schedule meal periods, which, coupled with
21 the heavy workload and pressure to meet Defendants' production deadlines, further
22 exacerbated the lack of meal period coverage. As a result of this lack of meal period
23 coverage, Plaintiff and other non-party Aggrieved Employees were not always afforded 30-
24 minute meal periods during shifts when they were entitled to receive a meal period. For
25 example, Plaintiff worked through his entire meal period approximately once per week in
26 order to complete assigned tasks, such as print jobs. For the same reason, Plaintiff's meal
27 periods were interrupted or cut short approximately once per month. Thus, Plaintiff and other
28 non-party Aggrieved Employees missed or had meal periods interrupted in order to complete

1 their assigned workloads. Further, on information and belief, because Defendants frowned
2 upon employees accruing meal period penalties, Defendants adjusted employee time records
3 to reflect compliant meal periods, regardless of whether they had received a compliant meal
4 period or not, in order to strictly limit meal penalties that Defendants would otherwise owe.
5 Thus, Plaintiff and other non-party Aggrieved Employees performed work during meal
6 periods for which they were not paid.

7 55. Second, during the relevant period, Defendants had, and continue to have, a
8 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
9 Employees to complete work-related tasks while off-the-clock. Defendants required
10 employees to use their personal cellular phones to communicate with management and co-
11 workers at all times, including during unpaid meals, before and after shifts, and/or on days off.
12 Defendants expected that Plaintiff and other non-party Aggrieved Employees promptly
13 respond to emails, calls, and texts at all times, to discuss work-related matters. For example,
14 Plaintiff was required to answer his cellular phone while off-the-clock before and after his
15 work shifts, so he could discuss work-related matters with co-workers and management.
16 Plaintiff spent approximately an hour per week off-the-clock, prior to or after his shifts,
17 responding to his supervisors about work assignments, checking work emails, and providing
18 pictures of work-related projects on his personal cellular phone, but was not paid for this time.
19 Thus, Defendants failed to track the time spent working before and after scheduled shifts, and
20 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

21 56. Third, during the relevant period, Defendants had a company-wide “on-call”
22 policy, whereby they scheduled Plaintiff and other non-party Aggrieved Employees to work
23 “on-call,” or on standby. These “on-call” shifts worked to Defendants’ benefit and to the
24 detriment of Plaintiff and other non-party Aggrieved Employees. By utilizing “on-call” shifts,
25 Defendants received the benefit of being able to maximize revenue by having a standby
26 workforce they could choose to utilize or not, depending on productivity metrics, without
27 incurring the cost of compensating employees who show up to work and work a full or partial
28 scheduled day’s work.

1 57. When scheduled for an “on-call” or standby shift, Plaintiff and other non-party
2 Aggrieved Employees were required to call into work four (4) hours before their scheduled
3 standby shift to see if they were required to come in and work. Plaintiff and other non-party
4 Aggrieved Employees were engaged to wait and could not engage in personal activities as
5 they had to be ready to travel to their respective facilities on short notice and work their
6 standby shift. When scheduled to be “on-call” for a standby shift, Plaintiff and other non-
7 party Aggrieved Employees were controlled by Defendants because they were forced to put
8 their lives on hold and could not use that time freely for their own purposes. For example,
9 Plaintiff refrained from making plans altogether while “on-call” for a standby shift because he
10 knew that he had to drop whatever he was doing at a moment’s notice if he was instructed to
11 work his standby shift. Defendants did not pay Plaintiff and other non-party Aggrieved
12 Employees for the time they spent waiting to hear whether they needed to report to their
13 facilities for work on days they ultimately were not called in. Defendants also did not
14 compensate Plaintiff and other non-party Aggrieved Employees for the time they spent calling
15 in to see if they were needed.

16 58. Defendants knew or should have known that, as a result of these company-wide
17 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
18 their assigned duties during their meal periods and performing work off-the-clock before or
19 after their shifts, and were suffered or permitted to perform work for which they were not
20 paid. Defendants also knew, or should have known, that they did not compensate Plaintiff and
21 other non-party Aggrieved Employees applicable overtime rates of pay for overtime hours that
22 they worked.

23 59. Because Plaintiff and other non-party Aggrieved Employees worked shifts of
24 eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock
25 work qualified for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved
26 Employees were not paid overtime wages for all of the overtime hours they actually worked.

27 60. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
28 correct overtime rate for the recorded overtime hours that they generated. In addition to an

hourly wage, Defendants paid other non-party Aggrieved Employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including but not limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required

61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198

62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

63. As set forth above, due to Defendants' uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads and production quotas, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Ortega and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and were otherwise not relieved of all duties during meal periods. For the same reasons, Plaintiff and other non-party Aggrieved Employees were required to perform their

1 duties work off-the-clock before and after their scheduled work shifts. Additionally, as
2 described above, Defendants' requirement that employees respond to work-related emails,
3 calls, and texts on their personal cellular phones while off-the-clock led to Plaintiff and other
4 non-party Aggrieved Employees not being compensated for all hours worked.

5 64. In addition, as set forth above, Defendants had a company-wide "on-call"
6 policy, whereby it required Plaintiff and other non-party Aggrieved Employees to wait to be
7 called by the office or call in themselves four (4) hours in advance when scheduled for
8 standby shifts. When this occurred, Plaintiff and other non-party Aggrieved Employees had to
9 put their lives on hold and were restricted from using that time freely for their own purposes.
10 Yet, Defendants did not pay Plaintiff and other non-party Aggrieved Employees at least
11 minimum wages for the time they spent calling in or waiting to see if they were needed at the
12 facility.

13 65. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
15 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
16 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1198.

18 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 67. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and
26 non-party Aggrieved Employees' employment by Defendants.

27 68. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
6 2012).

7 69. At all relevant times herein set forth, California Labor Code section 226.7,
8 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
9 meal period mandated by an applicable order of the IWC.

10 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
11 and the applicable IWC Wage Order also require employers to provide a second meal period
12 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
13 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
14 total hours worked is no more than twelve (12) hours, the second meal period may be waived
15 by mutual consent of the employer and the employee only if the first meal period was not
16 waived.

17 71. As stated, due to Defendants' use of labor budgets, resultant understaffing, and
18 pressure on employees to meet daily production quotas, along with its failure to schedule meal
19 periods or adhere to a schedule of meal periods, Plaintiff and other non-party Aggrieved
20 Employees were forced to forego meal periods, take late meal periods, have their meal periods
21 interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover,
22 Plaintiff and other non-party Aggrieved Employees were expected to respond to emails, calls,
23 and texts on their personal cellular phones at all times, including during meal periods.
24 Moreover, as stated, in order to prevent employees from accruing meal period penalties, on
25 information and belief, Defendants' management adjusted employees' time records to reflect
26 compliant meal periods, regardless of whether they had received a compliant meal period or
27 not, in order to strictly limit meal penalties that would need to be paid by Defendants.
28 Plaintiff and other non-party Aggrieved Employees worked through meal periods or had their

1 meal periods interrupted, because there were not enough employees on duty to handle the
2 assigned workload.

3 72. As a result, Plaintiff and other non-party Aggrieved Employees would be
4 forced to work in excess of five (5) hours before taking a meal period. For example, about 3-4
5 times per week, when a print job was underway, Plaintiff was required to keep working until
6 his print job was completed before he was provided with his meal period, which was usually
7 6-8 hours into his shift. For the same reasons, Plaintiff and other non-party Aggrieved
8 Employees also had their meal periods interrupted or cut short, and/or had to forgo their meal
9 periods altogether. For example, Plaintiff had to work through his meal periods at least once
10 per week and had his meal periods cut short at least once per month to assist with a production
11 deadline.

12 73. Additionally, Defendants had no policy for providing Plaintiff and other non-
13 party Aggrieved Employees with second 30-minute meal periods on days that they worked in
14 excess of ten (10) hours in one day. During his employment, Plaintiff worked shifts in excess
15 of ten (10) hours or more per day, but was not provided a second 30-minute meal period.
16 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
17 days that they were entitled to meal periods and were not relieved of all duties.

18 74. Defendants knew or should have known that as a result of their policies,
19 Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to
20 take timely, uninterrupted meal periods. Defendants further knew or should have known that
21 it did not pay Plaintiff and other non-party Aggrieved Employees meal period premium wages
22 when meal periods were missed, late, short, and/or interrupted.

23 75. Defendants also have engaged in a company-wide practice and/or policy of not
24 paying meal period premiums owed when compliant meal periods are not provided. Because
25 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
26 received premium pay for missed, late, and interrupted meal periods. Alternatively, to the
27 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
28 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate

1 other non-party Aggrieved Employees’ regular rates of pay by including all remunerations,
2 such as shift differential pay, incentive pay and/or nondiscretionary bonuses, any premiums
3 paid for meal period violations were also paid at an incorrect rate and resulted in an
4 underpayment of meal period premium wages.

5 76. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
6 Employees compliant meal periods and failed to pay the full meal period premiums due.
7 Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code
8 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
9 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
10 (g).

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
12 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

13 77. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
15 non-party Aggrieved Employees’ employment by Defendants.

16 78. At all relevant times, the applicable IWC Wage Order provides that “[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period” and that the “rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof” unless the total daily work time is less than three and one-half
21 (3½) hours.

22 79. At all relevant times, California Labor Code section 226.7 provides that no
23 employer shall require an employee to work during any rest period mandated by an applicable
24 order of the California IWC. To comply with its obligation to authorize and permit rest
25 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
26 employer must “relinquish any control over how employees spend their break time, and
27 relieve their employees of all duties—including the obligation that an employee remain on
28 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services*,

1 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

2 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
3 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
4 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
5 required rest period was not authorized and permitted.

6 81. During the relevant time period, Defendants regularly failed to authorize and
7 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
8 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
9 Defendants' company-wide practices, including the use of labor budgets and resultant
10 understaffing, while simultaneously pressuring employees to meet production quotas,
11 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
12 to take compliant rest periods. Moreover, Plaintiff and other non-party Aggrieved Employees
13 were expected to respond to emails, calls, and texts on their personal cellular phones at all
14 times, including during rest periods. Additionally, Defendants' failed to schedule rest periods,
15 which, coupled with Defendants' failure to provide adequate rest period coverage and pressure
16 to meet production deadlines, further led to Plaintiff and other non-party Aggrieved
17 Employees not being authorized and permitted to take compliant rest periods. Finally,
18 Plaintiff was explicitly told by his supervisor that employees were only entitled to take two (2)
19 rest periods when they worked shifts of 11.5 hours or more.

20 82. Furthermore, on information and belief, Defendants maintained and
21 implemented a company-wide practice and/or policy requiring that Plaintiff and other non-
22 party Aggrieved Employees remain on Defendants' premises during their rest periods.
23 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving
24 Defendants' premises during rest periods, they were denied the ability to use their rest periods
25 freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff
26 and other non-party Aggrieved Employees during rest periods, and, as a result of this rest
27 period policy, Defendants did not relinquish control over Plaintiff and other non-party
28 Aggrieved Employees during rest periods.

1 83. As a result of Defendants’ practices and policies, Plaintiff and other non-party
2 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
3 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
4 entitled. Throughout his employment, Plaintiff missed his rest periods due to understaffing,
5 heavy workload, and the lack of coverage for rest periods. In addition, Plaintiff was never
6 authorized or permitted to take his third rest periods when he worked shifts in excess of ten
7 (10) hours.

8 84. Defendants also have engaged in a company-wide practice and/or policy of not
9 paying all rest period premiums owed when compliant rest periods are not authorized or
10 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
11 Employees have not received premium pay for all missed rest periods. Alternatively, to the
12 extent that Defendants did pay rest period premium wages to other non-party Aggrieved
13 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
14 other non-party Aggrieved Employees’ regular rates of pay by including all remunerations,
15 such as shift differential pay, incentive pay and/or nondiscretionary bonuses, any premiums
16 paid for rest period violations were also paid at an incorrect rate and resulted in an
17 underpayment of rest period premium wages.

18 85. Defendants’ conduct violates the applicable IWC Wage Order and California
19 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
20 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
21 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
23 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

24 86. At all relevant times herein, California Labor Code section 226(a) provides that
25 every employer shall furnish each of his or her employees an accurate and complete itemized
26 wage statement in writing, including, but not limited to, the name and address of the legal
27 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
28 applicable rates of pay.

1 87. During the relevant time period, Defendants have knowingly and intentionally
2 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
3 inaccurate wage statements. For example, Defendants issued uniform wage statements to
4 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
5 earned; total hours worked; net wages earned; the correct name and address of the legal entity
6 that is the employer; and all applicable hourly rates in effect during the pay period, including
7 overtime rates of pay, and the corresponding number of hours worked at each hourly rate.
8 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and
9 226(a)(9).

10 88. First, because Defendants did not record the time Plaintiff and other non-party
11 Aggrieved Employees spent working off-the-clock and deducted time from their records for
12 meal periods that were interrupted and/or missed (and therefore time for which they should
13 have been paid), Defendants did not list the correct amount of gross wages and net wages
14 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
15 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
16 number of hours worked by Plaintiff and other non-party Aggrieved Employees in violation of
17 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
18 period and corresponding accurate number of work hours worked at each hourly rate in
19 violation of section 226(a)(9).

20 89. Second, because Defendants did not calculate other non-party Aggrieved
21 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants
22 did not list the correct amount of gross wages earned by other non-party Aggrieved
23 Employees in compliance with section 226(a)(1) and did not list the correct amount of net
24 wages earned by other non-party Aggrieved Employees in violation of section 226(a)(5).
25 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
26 period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in
27 violation of section 226(a)(9).

28 90. Third, and separate from these violations, Defendants issued uniform wage

1 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list
2 the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
3 section 226(a)(8) is to provide California employees with transparency as to the true identity
4 of their employer, to allow the employee to contact their employer during employment in the
5 future for various reasons, including filing an administrative claim, judicial claim, or other
6 action to seek relief against their employer, to obtain unemployment benefits, etc. According
7 to Plaintiff's and other non-party Aggrieved Employees' wage statements, the legal name of
8 the employing entity is "CARBON, INC." However, according to the California Secretary of
9 State, the entity "CARBON, INC." is a California corporation based in San Diego, and is
10 unrelated to Defendants. There is another entity listed with the California Secretary of State,
11 named "CARBON, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS
12 CARBON3D, INC." located at "1089 Mills Way, Redwood City, CA 94063." Upon
13 information and belief, this is the true name of the employing entity.

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

22 92. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
2 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
3 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
4 and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records
5 by deducting meal periods or recording that compliant meal periods were taken regardless of
6 if or when meal periods were actually taken, and thereby failed to keep accurate records of
7 meal start and end times for Plaintiff and other non-party Aggrieved Employees.
8 Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved
9 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
10 no records of meal start and end times for second meal periods.

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

21 94. Because Defendants' violations of 226(a) and 1174(d) were committed against
22 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
23 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
24 1174.5, and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 95. At all relevant times herein set forth, California Labor Code section 204
28 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

7 96. At all relevant times herein, California Labor Code section 204 also requires
8 that all wages earned for labor in excess of the normal work period shall be paid no later than
9 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
10 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
11 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
12 more than seven (7) calendar days following the close of the payroll period.

13 97. During the relevant time period, Defendants failed to pay Plaintiff and other
14 non-party Aggrieved Employees all wages due to them including, but not limited to, overtime
15 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay,
16 within any time period specified by California Labor Code section 204.

17 98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY WAGES UPON TERMINATION**

20 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

21 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved

1 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
2 above, including but not limited to, overtime wages, minimum wages, meal and rest period
3 premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-
4 two (72) hours of their leaving Defendants' employ.

5 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
10 2699(a), (f), and (g).

11 **FAILURE TO PAY REPORTING TIME PAY**

12 **VIOLATION OF LABOR CODE SECTION 1198**

13 102. California Labor Code section 1198 makes it illegal to employ an employee
14 under conditions of labor that are prohibited by the applicable wage order. California Labor
15 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
16 shall be the ... standard conditions of labor for employees. The employment of any employee
17 ... under conditions of labor prohibited by the order is unlawful."

18 103. California Code of Regulations, Title 8, section 11010(5)(A) provides that
19 "[e]ach workday an employee is required to report for work and does report, but is not put to
20 work or is furnished less than half said employee's usual or scheduled day's work, the
21 employee shall be paid for half the usual or scheduled day's work, but in no event for less
22 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
23 shall not be less than the minimum wage." The "primary purpose of the reporting time
24 regulation" is "to guarantee at least partial compensation for employees who report to work
25 expecting to work a specified number of hours, and who are deprived of that amount because
26 of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch*
27 *Cellular*, 209 Cal. App. 4th 556 (2012).

28 104. Upon information and belief, Defendants violated California Labor Code

1 section 1198 and California Code of Regulations, Title 8, section 11010(5), because
2 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
3 pay when they reported to work for their scheduled shift but were put to work for less than
4 half of the regular schedule.

5 105. As described above, Defendants had a company-wide “on-call” policy, whereby
6 they scheduled Plaintiff and other non-party Aggrieved Employees to work “on-call,” or on
7 standby. When scheduled for an “on-call” or standby shift, Plaintiff and other non-party
8 Aggrieved Employees regularly presented themselves as ready for work by calling in to the
9 office four (4) hours prior to their scheduled standby shift and would await instructions on
10 whether to go to the facility, but were ultimately not told to come in. When this occurred,
11 Defendants did not pay Plaintiff and other non-party Aggrieved Employees for at least half of
12 their scheduled day’s work when they were subject to Defendants’ “on-call” policy and were
13 ultimately not called or not told to come into the facility. For example, Plaintiff waited at
14 home as required by Defendant’ on-call policy, but was sometimes not called or told that the
15 facility did not need him to work. Accordingly, Plaintiff and other non-party Aggrieved
16 Employees were not properly compensated with reporting time pay in violation of California
17 Labor Code section 1198.

18 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
19 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g)

20 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

21 **VIOLATION OF LABOR CODE SECTION 2802**

22 107. At all times herein set forth, California Labor Code section 2802 provides that
23 an employer must reimburse employees for all necessary expenditures and losses incurred by
24 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
25 to prevent employers from passing off their cost of doing business and operating expenses on
26 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
27 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w] tools or
28 equipment are required by the employer or are necessary to the performance of a job, such

1 tools and equipment shall be provided and maintained by the employer, except that an
2 employee whose wages are at least two (2) times the minimum wage may provide and
3 maintain hand tools and equipment customarily required by the particular trade or craft.”

4 108. During the relevant time period, Defendants, on a company-wide basis,
5 required that Plaintiff and other non-party Aggrieved Employees utilize their own personal
6 cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse
7 them for the costs of their cellular phone and/or data plans. Plaintiff and non-party Aggrieved
8 Employees were required to use their personal cellular phones to complete their work-related
9 tasks, such as discussing assignment with managers, sending pictures via SMS text to
10 managers, and reviewing and responding to work-related email messages. For example,
11 Plaintiff would spend at least 30 minutes per day responding to his supervisors about
12 upcoming assignments and work-related matter, using his personal cellular phone. Although
13 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their
14 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
15 fully reimburse them for this cost.

16 109. Additionally, Defendants, on a company-wide basis, required Plaintiff and
17 other non-party Aggrieved Employees to utilize their own personal vehicles to carry out
18 company business, but failed to fully reimburse them for all costs of travel, including mileage.
19 For example, when Plaintiff and other non-party Aggrieved Employees drove to work at
20 Defendants’ other locations, to cover additional shifts, they were not compensated for their
21 mileage. Plaintiff and other non-party Aggrieved Employees who were typically assigned to
22 the Redwood City facility could be re-assigned to work at the Santa Clara facility for a few
23 days at a time, and vice versa (from Santa Clara to Redwood City), but were not reimbursed
24 for their travel costs. Other non-party Aggrieved Employees could also be required to drive
25 from one facility to another during a shift, in order to complete tasks such as pulling product
26 from an oven, and were similarly not reimbursed for their mileage or travel expenses.
27 Although Defendants required Plaintiff and other non-party Aggrieved Employees to use their
28 own vehicles and complete these tasks as part of their job duties, Defendants failed to

1 reimburse them for all of these expenses.

2 110. Defendants' could have provided Plaintiff and other non-party Aggrieved
3 Employees with the actual tools for use on the job, such as company phones and company
4 vehicles. Or, Defendants could have reimbursed employees for their cellular phone expenses,
5 travel expenses, and mileage. Instead, Defendants passed these operating costs off onto
6 Plaintiff and other non-party Aggrieved Employees.

7 111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
13 judgment against Defendants, jointly and severally, as follows:

14 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
15 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

17 2. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
19 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
20 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
21 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
22 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
23 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
24 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
25 employment); 1198 (by failing to provide reporting time pay); and 2802 (by failing to
26 reimburse business expenses).

27 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
28 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,

203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

Dated: October 30, 2020

Respectfully submitted,

Capstone Law APC

By:



Mark Ozzello
Brandon Brouillette
Joseph Hakakian

Attorneys for Plaintiff Jacob Ortega

EXHIBIT 1



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August 24, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Jacob Ortega v. Carbon, Inc., Which Will Do Business in California as Carbon3D, Inc.*

Dear PAGA Administrator:

This office represents Jacob Ortega in connection with his claims under the California Labor Code. Mr. Ortega was an employee of CARBON, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS CARBON3D, INC. ("CARBON").

The employer may be contacted directly at the address below:

CARBON, INC., WHICH WILL DO BUSINESS
IN CALIFORNIA AS CARBON3D, INC.
1089 MILLS WAY
REDWOOD CITY, CA 94063

Mr. Ortega intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Ortega seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CARBON in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CARBON employed Mr. Ortega as a non-exempt, hourly paid Special Projects Technician from June 2018 to November 2019. Mr. Ortega worked for CARBON at its facility located in Redwood City, California. During his employment, Mr. Ortega typically worked twelve (12) hours per day, five (5) to six (6) days per week, from 6:00 p.m. to 6:00 a.m. At the time his employment ended, Mr. Ortega was compensated approximately \$26.00 per hour. Mr. Ortega's primary job duties included, without limitation, processing 3D prints, mixing chemicals, boxing shipments, and processing orders.

CARBON has committed one or more of the following Labor Code violations against Mr. Ortega, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CARBON’s Company-Wide and Uniform Payroll and HR Practices

CARBON, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS CARBON3D, INC. is registered in Delaware and headquartered in Redwood City, California. CARBON manufactures 3D-printed polymer components for use by leading brands in 3D printing. CARBON owns and operates a manufacturing facility in Redwood City, California. Upon information and belief, CARBON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Redwood City, California, for all non-exempt, hourly paid employees working for CARBON in California, including Mr. Ortega and other aggrieved employees. At all relevant times, CARBON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ortega and other aggrieved employees, regardless of their location or position.

Upon information and belief, CARBON maintains a centralized Payroll department at its corporate headquarters in Redwood City, California, which processes payroll for all non-exempt, hourly paid employees working for CARBON in California, including Mr. Ortega and other aggrieved employees. Further, CARBON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Ortega and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CARBON utilized the same methods and formulas when calculating wages due to Mr. Ortega and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CARBON willfully failed to pay all overtime wages owed to Mr. Ortega and other aggrieved employees. During the relevant time period, Mr. Ortega and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Ortega’s experience and counsel’s review of those records currently available relating to Mr. Ortega’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Ortega reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, CARBON had, and continues to have, a company-wide policy of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. CARBON's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included daily production quotas. Because CARBON did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. Ortega and other aggrieved employees were assigned heavy workloads, which CARBON knew or should have known could only be met by working additional hours. Mr. Ortega and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and assist with production deadlines.

Moreover, CARBON has, on a company-wide basis, failed to schedule or adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from CARBON to complete assigned tasks, impeded Mr. Ortega and other aggrieved employees from taking timely, compliant meal periods. For example, Mr. Ortega worked through his entire meal period approximately once per week in order to complete print jobs. For the same reason, Mr. Ortega's meal periods were interrupted or cut short approximately once per month. Further, on information and belief, because CARBON frowned upon employees accruing meal period penalties, CARBON adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that CARBON would otherwise owe. Consequently, Mr. Ortega and other aggrieved employees performed work during meal periods for which they were not paid.

CARBON's understaffing also led to Mr. Ortega and other aggrieved employees having to continue to perform work off-the-clock after their shifts ended, in order to complete their assigned tasks. For example, Mr. Ortega was sometimes required to complete reports while off-the-clock after his shifts because he did not have sufficient time to write them while he was attending to other tasks during his scheduled shifts. To the extent these hours worked qualified for overtime, CARBON did not pay Mr. Ortega and other aggrieved employees for the time they continued to perform tasks while off-the-clock.

Second, during the relevant time period, CARBON had a company-wide policy and/or practice of requiring employees to use their personal cellular phones to communicate with management and co-workers at all times, including during unpaid meals, before and after shifts, and/or on days off. CARBON expected that Mr. Ortega and other aggrieved employees promptly respond to emails, calls, and texts at all times, to discuss work-related matters. For example, Mr. Ortega was required to answer his cellular phone while off-the-clock before and after his work shifts, so he could discuss work-related matters with co-workers and management. Mr. Ortega spent up to eight (8) hours per week responding to work-related emails, calls, and texts. However, CARBON did not compensate Mr. Ortega and other aggrieved employees for the time they spent communicating with management and co-workers regarding work-related issues while off-the-clock.

Third, during the relevant period, CARBON had a company-wide "on-call" policy, whereby it scheduled Mr. Ortega and other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to CARBON's benefit and to the detriment of Mr. Ortega and other aggrieved employees. By utilizing "on-call" shifts, CARBON received the benefit of being able to maximize

revenue by having a standby workforce they could choose to utilize or not, depending on production metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work.

When scheduled for a "on-call" or standby shift, Mr. Ortega and other aggrieved employees were required to wait for CARBON to call them or call in within four (4) hours before their scheduled standby shift to see if they were required to come in and work. Mr. Ortega and other aggrieved employees were engaged to wait and could not engage in personal activities, as they had to be ready to travel to CARBON's facility on short notice and work their standby shift. When scheduled to be "on-call" for a standby shift, Mr. Ortega and other aggrieved employees were controlled by CARBON because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Mr. Ortega and other aggrieved employees refrained from making plans altogether while "on-call" for a standby shift because they knew that they had to drop whatever they were doing at a moment's notice if they were instructed to work their standby shift. CARBON did not pay Mr. Ortega and other aggrieved employees for the time they spent waiting to hear whether they needed to report to the facility for work on days they ultimately were not called in. CARBON also did not compensate Mr. Ortega and other aggrieved employees for the time they spent calling in to see if they were needed.

CARBON knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Ortega and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. CARBON also knew, or should have known, that it did not compensate Mr. Ortega and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Ortega and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Ortega and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. CARBON's failure to pay Mr. Ortega and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, CARBON did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CARBON paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CARBON failed to incorporate all compensation, including but not limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, CARBON failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Ortega and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As stated, due to CARBON’s uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads and production quotas, failure to schedule or adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Ortega and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and were otherwise not relieved of all duties during meal periods. For the same reasons, Mr. Ortega and other aggrieved employees were required to perform their duties work off-the-clock before and after their scheduled work shifts. Additionally, as described above, CARBON’s requirement that employees respond to work-related emails, calls, and texts on their personal cellular phones while off-the-clock led to Mr. Ortega and other aggrieved employees not being compensated for all hours worked.

In addition, as set forth above, CARBON had a company-wide “on-call” policy, whereby it required Mr. Ortega and other aggrieved employees to wait to be called by the office or call in themselves four (4) hours in advance when scheduled for standby shifts. When this occurred, Mr. Ortega and other aggrieved employees had to put their lives on hold and were restricted from using that time freely for their own purposes. Yet, CARBON did not pay Mr. Ortega and other aggrieved employees at least minimum wages for the time they spent calling in or waiting to see if they were needed at the facility.

Thus, CARBON did not pay minimum wages for all hours worked by Mr. Ortega and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CARBON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, CARBON regularly failed to pay at least minimum wages to Mr. Ortega and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Ortega and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period

may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, due to CARBON's use of labor budgets, resultant understaffing, and pressure on employees to meet daily production quotas, along with its failure to schedule meal periods or adhere to a schedule of meal periods, Mr. Ortega and other aggrieved employees were forced to forego meal periods, take late meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, Mr. Ortega and other aggrieved employees were expected to respond to emails, calls, and texts on their personal cellular phones at all times, including during meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CARBON's management adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by CARBON. As a result, Mr. Ortega and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period. For example, about 3-4 times per week, when a print job was underway, Mr. Ortega was required to keep working until his print job was completed before he was provided with his meal period, which was usually 6-8 hours into his shift. For the same reasons, Mr. Ortega and other aggrieved employees also had their meal periods interrupted or cut short, and/or had to forgo their meal periods altogether. For example, Mr. Ortega had to work through his meal periods at least once per week and had his meal periods cut short at least once per month to assist with a production deadline.

Additionally, CARBON did not provide Mr. Ortega and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Ortega worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. Mr. Ortega and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

CARBON also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Ortega and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that CARBON did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CARBON did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, CARBON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Ortega and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides 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" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CARBON regularly failed to authorize and permit Mr. Ortega and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CARBON's company-wide policies and practices, including the use of labor budgets and resultant understaffing, while simultaneously pressuring employees to meet production quotas, prevented Mr. Ortega and other aggrieved employees from being relieved of all duty to take compliant rest periods. Moreover, Mr. Ortega and other aggrieved employees were expected to respond to emails, calls, and texts on their personal cellular phones at all times, including during rest periods. CARBON also failed to schedule rest periods, which, coupled with CARBON's failure to provide adequate rest period coverage, further led to Mr. Ortega and other aggrieved employees not being authorized and permitted to take compliant rest periods. Finally, Mr. Ortega was explicitly told by his supervisor that employees were only entitled to take two (2) rest periods when they worked shifts of 11.5 hours or more.

Additionally, on information and belief, CARBON maintained and implemented a company-wide practice and/or policy requiring that Mr. Ortega and other aggrieved employees remain on premises during their rest periods. Because Mr. Ortega and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, CARBON effectively maintained control over Mr. Ortega and other aggrieved employees during rest periods, and, as a result of this rest period policy, CARBON did not relinquish control over Mr. Ortega and other aggrieved employees during rest periods.

As a result of CARBON's practices and policies, Mr. Ortega and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Ortega would miss his rest periods due to understaffing, heavy workload, and the lack of coverage for rest periods. In addition, Mr. Ortega was never authorized or permitted to take his third rest periods when he worked shifts in excess of ten (10) hours.

CARBON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Ortega and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CARBON did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CARBON did not pay other aggrieved employees at the correct rate of pay for premium wages because CARBON failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CARBON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ortega and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CARBON has not provided Mr. Ortega and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CARBON has knowingly and intentionally provided Mr. Ortega and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CARBON issued uniform wage statements to Mr. Ortega and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CARBON violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CARBON did not record the time Mr. Ortega and other aggrieved employees spent working off-the-clock, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CARBON did not list the correct amount of gross wages and net wages earned by Mr. Ortega and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, CARBON failed to accurately list the total number of the hours worked by Mr. Ortega and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because CARBON did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, CARBON did not list the correct amount of gross wages

earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). CARBON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, CARBON issued uniform wage statements to Mr. Ortega and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. According to Mr. Ortega's and other aggrieved employees' wage statements, the legal name of the employing entity is "CARBON, INC." However, according to the California Secretary of State, the entity "CARBON, INC." is a California corporation based in San Diego, and is unrelated to CARBON. There is another entity listed with the California Secretary of State, named "CARBON, INC., WHICH WILL DO BUSINESS IN CALIFORNIA AS CARBON 3D, INC.," located at "1089 Mills Way, Redwood City, CA 94063." Upon information and belief, this is the true name of the employing entity. *See example paystub below.*

<table border="1"><tr><td>CO.</td><td>FILE</td><td>DEPT.</td><td>CLOCK</td><td>VCHR. NO.</td><td>075</td></tr></table> CARBON, INC. 1089 MILLS WAY REDWOOD CITY, CA 94063	CO.	FILE	DEPT.	CLOCK	VCHR. NO.	075	Earnings Statement  Period Beginning: 10/16/2019 Period Ending: 10/31/2019 Pay Date: 10/31/2019
CO.	FILE	DEPT.	CLOCK	VCHR. NO.	075		
Taxable Marital Status: Exemptions/Allowances: Federal: CA:							

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CARBON willfully failed to maintain accurate payroll records for Mr. Ortega and other

aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, CARBON engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Ortega and other aggrieved employees. Also, as stated, CARBON engaged in a company-wide practice and/or policy of falsifying Mr. Ortega’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal period start and end times for Mr. Ortega and other aggrieved employees. Furthermore, in light of CARBON’s failure to provide Mr. Ortega and other aggrieved employees with second 30-minute meal periods to which they were entitled, CARBON kept no records of meal start and end times for second meal periods.

Because CARBON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Ortega and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Ortega and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Ortega and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CARBON failed to pay Mr. Ortega and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Ortega and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

CARBON willfully failed to pay Mr. Ortega and other aggrieved employees who are no longer employed by CARBON all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving CARBON's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Ortega and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

CARBON violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because CARBON to pay Mr. Ortega and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

As described above, CARBON had a company-wide “on-call” policy, whereby it scheduled Mr. Ortega and other aggrieved employees to work “on-call,” or on standby. When scheduled for an “on-call” or standby shift, Mr. Ortega and other aggrieved employees presented themselves as ready for

work by waiting for CARBON to call them or by calling in to the office themselves four (4) hours prior to their scheduled standby shift and would await instructions on whether to go to the facility, but were ultimately not told to come in. When this occurred, CARBON did not pay Mr. Ortega and other aggrieved employees for at least half of their scheduled day's work when they were subject to CARBON's "on-call" policy and were not called or told not to come into the facility. For example, Mr. Ortega waited at home as required by CARBON's on-call policy, but was sometimes not called or told that the facility did not need him to work. When this occurred, CARBON did not pay him for at least half of his scheduled standby time or the required minimum reporting time pay.

Mr. Ortega and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, CARBON, on a company-wide basis, required that Mr. Ortega and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Ortega and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as responding to emails, sending work-related pictures, or discussing work assignments with CARBON's managers. Mr. Ortega would typically spend at least 30 minutes per day texting or speaking with his managers/supervisors. Although CARBON required Mr. Ortega and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, CARBON failed to fully reimburse them for this cost.

Additionally, during the relevant time period, CARBON had a company-wide policy of requiring Mr. Ortega and other aggrieved employees to utilize their own personal vehicles for work purposes such as driving to other work locations, but failed to reimburse them for all costs of travel, including mileage. Although CARBON required Mr. Ortega and other aggrieved employees to utilize their own vehicles to travel to and from these work locations, CARBON did not reimburse them fully for all of their travel expenses.

CARBON could have provided Mr. Ortega and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles to be used for fulfilling work-related tasks, or could have reimbursed employees for the costs of their cellular phone usage, travel expenses, and mileage. Instead, CARBON passed these operating costs off onto Mr. Ortega and other aggrieved employees.

Thus, CARBON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Ortega and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CARBON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Ortega's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Ortega seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Ortega, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CARBON for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Pre-Litigation Demand

This notice shall further serve as Mr. Ortega's reasonable attempt to settle his dispute with CARBON prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CARBON of Mr. Ortega's aforementioned grievances and the proposed remedies as detailed below, while affording CARBON a reasonable opportunity to satisfy Mr. Ortega's demands.

Demand is hereby made that CARBON shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. CARBON shall pay Mr. Ortega and all other aggrieved employees employed by CARBON at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CARBON shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. CARBON shall conduct a survey or interview all current and former aggrieved employees in California who worked for CARBON in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and

permitted; and the number of employees who were required to pay for cellular phone expenses, mileage, travel expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. CARBON shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. CARBON also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. CARBON shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for CARBON's benefit, including, but not limited to, costs of cellular phone expenses, mileage, and travel expenses, as required by Labor Code section 2802.
6. CARBON shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. CARBON shall provide Mr. Ortega and all aggrieved employees employed by CARBON at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. CARBON shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. CARBON shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Therefore, on behalf of all aggrieved employees, Mr. Ortega seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

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

Michelle Kennedy

Copy: CARBON, INC., WHICH SHALL DO BUSINESS IN CALIFORNIA AS CARBON3D, INC.
(via U.S. Certified Mail)