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Attorneys for Plaintiff,

SHANE ROLLMAN, and all others similarly situated

(Additional Counsel on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

(UNLIMITED JURISDICTION)

SHANE ROLLMAN, on behalf of himself
and all others similarly situated, and as an
"aggrieved employee" on behalf of other
"aggrieved employees" under the Labor
Code Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation doing business as AMS Retail
Solutions; ~~AUTOMATED MANAGEMENT~~
~~SYSTEMS, INC., a Virginia corporation~~
~~doing business as AMS Retail Solutions;~~ and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: 34-2020-00283600

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Employees for All Hours Worked at Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
4. Failure to Indemnify (Cal. Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*);
7. Waiting Time Penalties (Lab. Code §§ 201-203); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

BY FAX



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1 Plaintiff Shane Rollman (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the
6 Wage Order”), the Business and Professions Code against defendants AMERICAN
7 MERCHANDISING SPECIALISTS, INC., a North Carolina corporation, and DOES 1-50,
8 inclusive (hereafter collectively referred to as “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former hourly, non-exempt employees in California
11 for unpaid wages, civil penalties, and other related relief. These claims are based on Defendants’
12 alleged failures to (1) pay all wages for all hours worked at the correct rates of pay, (2) provide
13 all rest breaks required by California law, (3) provide all meal periods required by California law,
14 (4) indemnify for business expenses, (5) provide accurate written wage statements, (6) fairly
15 compete, and (7) timely pay final wages upon termination of employment. Additionally, Plaintiff
16 seeks civil penalties under the California Labor Code Private Attorneys General Act, Labor Code
17 §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover unpaid wages, civil
18 penalties, and related relief through this class action.

19 **JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
21 and class members, inclusive of all relief, place more than \$25,000 in controversy.

22 4. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of himself and class members that solely arise under
24 California law, rather than federal law.

25 5. There is also no basis for federal diversity jurisdiction in this case.

26 6. Venue is proper in Sacramento County pursuant to California Code of Civil
27 Procedure § 395(a) and § 395.5 in that liability arose in Sacramento County because at least some
28 of the transactions that are the subject matter of this Complaint occurred therein and/or because
each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

7. Defendants employed Plaintiff as an hourly, non-exempt field marketing



1 representative from approximately January of 2019 to approximately August 26, 2019, at which
2 time his employment ended. Plaintiff worked for Defendants out of their offices in Sacramento,
3 California and throughout the State of California. At all relevant times, Plaintiff was an
4 “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an
5 “aggrieved employee” within the meaning of Labor Code Section 2699(c).

6 8. Defendant AMERICAN MERCHANDISING SPECIALISTS, INC. is a
7 corporation organized and existing under the laws of North Carolina and also a citizen of
8 California based on Plaintiff’s information and belief. At all relevant times, it did business in
9 California as AMS Retails Solutions.

10 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
11 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
12 is informed and believes and thereon alleges that said defendants are legally responsible for the
13 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
14 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants
15 when ascertained.

16 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
17 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
18 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
19 and scope of such agency or employment, and with the approval and ratification of each of the
20 other Defendants.

21 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
22 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
23 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-
24 described class in accordance with applicable laws as alleged herein.

25 12. Plaintiff is informed and believes and thereon alleges that each and every one of
26 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
27 each acting as agents and/or employees, and/or under the direction and control of each of the other
28 defendants, and that said acts and failures to act were within the course and scope of said agency,
employment and/or direction and control.

FACTUAL ALLEGATIONS

13. In or about January of 2019, Defendants first employed Plaintiff to work as an



1 hourly, nonexempt field marketing representative to drive major appliance sales by providing
2 brand advocacy, training and product knowledge to personnel and managers. Defendants
3 expected him and others in comparable positions to visit their customers to promote vendor
4 products, perform sales/support services and maintain product displays in assigned stores, among
5 other things. Defendants compensated Plaintiff at an hourly rate of pay of \$19.75. Defendants
6 employed Plaintiff continuously from his date of hire through August 26, 2019. Defendants at all
7 times issued wages to Plaintiff and the Class Members on a biweekly basis. Defendants employed
8 Plaintiff continuously in this capacity until his employment ended on August 26, 2019.

9 14. At all relevant times, Defendants required Plaintiff and the Class Members to work
10 more than eight hours per day and 40 hours per week. However, they prohibited them from
11 recording more than seven hours of daily work for payroll purposes. Defendants knew that
12 Plaintiff and the Class Members could not complete all of their required tasks within seven hours.
13 At all relevant times, Defendants required Plaintiff and the Class Members to travel in their
14 personal automotive vehicles between customers locations each day, though they did not
15 compensate them for their travel time and did not reimburse them for all of the mileage they
16 incurred. At all relevant times, Defendants required Plaintiff and the Class Members to remain
17 “on-call” when they were not on work shifts and to respond immediately to work-related calls
18 and travel to customers as necessary in response. However, they did not compensate them for
19 such time on-call, even if such time involved several phone calls with Defendants customers.

20 15. At relevant times within the applicable limitations period, Defendants failed to
21 provide Plaintiff and the Class Members with an off-duty, 30-minute meal period before the end
22 of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the
23 tenth hour worked. The work Defendants expected Plaintiff and the Class Members to complete
24 each day prevented them from taking such meal periods. Defendants automatically deducted 30
25 minutes of daily work time from the time records of Plaintiff and the Class Members regardless
26 of whether they were able to take a meal period.

27 16. Defendants further failed to authorize and permit Plaintiff and the Class Members
28 to take ten minute rest breaks every four hours or major fraction thereof. It was impossible for
Plaintiff and the Class Members to take rest periods because Defendants expected them to monitor
their mobile communication devices at all times. Additionally, the work Defendants expected
Plaintiff and the Class Members to complete each day prevented them from taking such rest



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1 periods. Defendants did not request an exemption from California's rest period law from the
2 Division of Labor Standards Enforcement. Neither Plaintiff nor any of the Class Members entered
3 into a written waiver of their second meal period with Defendants. Defendants also failed to pay
4 Plaintiff and the Class Members premium wages for days on which they failed to provide them
with all timely meal and rest periods.

5 17. Plaintiff alleges that as a result of Defendants' systematic payroll policies and
6 practices, Plaintiff and other class members were:

7 A. Not compensated for all hours worked including all overtime hours worked
8 at the correct rates of pay;

9 B. Not provided with all rest breaks and timely meal periods;

10 C. Not paid one hour's pay for each workday in which Defendants failed to
11 provide them one or more rest breaks;

12 D. Not paid one hour's pay for each workday in which Defendants failed to
13 provide them with one or more timely meal periods;

14 E. Not provided with accurate written wage statements; and

15 F. Not timely paid all earned and unpaid wages during their employment with
16 Defendants and at the time such employment ended.

17 **CLASS ACTION ALLEGATIONS**

18 18. This action has been brought and may be maintained as a class action pursuant to
19 California Code of Civil Procedure § 382 because there is a well-defined community of interest
20 among the persons who comprise the readily ascertainable class defined below and because
21 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
22 action.

23 19. **Class Definition:** The Class is defined as follows: All persons Defendants
24 employed in California as hourly, non-exempt employees, including field marketing
25 representatives and employees in comparable positions, at any time during the period beginning
26 four years prior to the filing of this action and ending on the date that final judgment is entered in
27 this action.

28 20. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definitions with greater specificity, by further division into
subclasses and/or by limitation to particular issues.



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1 21. **Numerosity:** The class members are so numerous that the individual joinder of
2 each individual class member is impractical. While Plaintiff does not currently know the exact
3 number of class members, Plaintiff is informed and believes that the actual number exceeds the
4 minimum required for numerosity under California law.

5 22. **Commonality and Predominance:** Common questions of law and fact exist as to
6 all class members and predominate over any questions which affect only individual class
7 members. These questions include, but are not limited to:

8 A. Whether Defendants failed to pay all wages to the class for all hours
9 worked including all overtime hours worked at the correct rates of pay?

10 B. Whether Defendants failed to provide the class with all rest breaks as
11 required by section 11 of the Wage Order?

12 C. Whether Defendants failed to provide the class with all meal periods as
13 required by section 10 of the Wage Order?

14 D. Whether Defendants failed to indemnify class members for expenses
15 incurred at Defendants' direction?

16 E. Whether Defendants engaged in unfair competition within the meaning of
17 Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

18 F. Whether Defendants knowingly and intentionally failed to provide the
19 class with accurate wage statements?

20 G. Whether Defendants willfully failed to provide the class with timely final
21 wages?

22 H. Whether there is money or property that Defendants may have acquired
23 from class members through alleged Labor Code violations?

24 I. Whether class members are entitled to restitution of money or property that
25 Defendants may have acquired from them through alleged Labor Code violations?

26 J. Whether class members are entitled to liquidated damages?

27 K. Whether class members are entitled to prejudgment interest?

28 L. Whether class members are entitled to attorneys' fees?

 M. Whether class members are entitled to statutory damages?

 23. **Typicality:** Plaintiff's claims are typical of the other class members' claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a



1 lack of a policy which resulted in Defendants failing to comply with the California Labor Code,
2 and the Business and Professions Code as alleged herein.

3 24. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
4 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
5 class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class
6 members. Plaintiff will fairly and adequately represent and protect the interests of class members.

7 25. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
8 they have no known conflicts of interest with Plaintiff or absent class members, are experienced
9 in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on
10 behalf of Plaintiff and absent class members.

11 26. **Superiority:** A class action is vastly superior to other available means for fair and
12 efficient adjudication of class members' claims and would be beneficial to the parties and the
13 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
14 and efficiently prosecute their common claims in a single forum without the unnecessary
15 duplication of effort and expense that numerous individual actions would entail. In addition, the
16 monetary amounts due to many individual class members are likely to be relatively small and
17 would thus make it difficult, if not impossible, for individual class members to both seek and
18 obtain relief. Moreover, a class action will serve an important public interest by permitting class
19 members to effectively pursue the recovery of monies owed to them. Further, a class action will
20 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES FOR ALL HOURS WORKED AT THE CORRECT 23 RATES OF PAY**

24 **(Lab. Code §§ 221, 510, 1194, 1197, and 1198)**

25 **(By Plaintiff and the Class against all Defendants)**

26 27. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

27 28. At all relevant times, Plaintiff and the class have been employees of Defendants
28 and entitled to the benefits and protections of the California Labor Code §§ 221, 510, 1194, 1197,
and 1198 and the Wage Order.

29. Section 2 of the applicable Wage Order defines "hours worked" as "the time
during which an employee is subject to the control of an employer, and includes all the time the



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employee is suffered or permitted to work, whether or not required to do so.”

30. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

31. Section 3 of the applicable Wage Order states

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.

32. While the provisions of Sections 3 through 12 of Wage Order 4 do not apply to persons employed in administrative or executive positions, sections (1)(A)(1)(f) and (1)(A)(2)(g) of the Wage Order require that the employer pay such employees a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week. Additionally, an



1 employee is paid on a “salary basis” if:

2 [T]he employee regularly receives each pay period on a weekly, or less frequent
3 basis, a predetermined amount constituting all or part of the employee’s
4 compensation, which amount is not subject to reduction because of variations in
5 the quality or quantity of the work performed. Subject to the exceptions provided
6 in paragraph (b) of this section, an exempt employee must receive the full salary
7 for any week in which the employee performs any work without regard to the
8 number of days or hours worked. Exempt employees need not be paid for any
9 workweek in which they perform no work. An employee is not paid on a salary
basis if deductions from the employee’s predetermined compensation are made for
absences occasioned by the employer or by the operating requirements of the
business. If the employee is ready, willing and able to work, deductions may not
be made for time when work is not available.

10 29 C.F.R. § 541.602(a); *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398.
11 Moreover, deductions for less than a full day’s absence are not permitted unless such deductions
12 are made from an employee’s vacation leave bank. 29 C.F.R. § 541.602(a); *Conley v. Pacific Gas*
13 *and Elec. Co.* (2005) 131 Cal.App.4th 260, 267; see *Rhea v. General Atomics* (2014) 227
14 Cal.App.4th 1560, 1575.

15 33. Labor Code § 510 states

16 Eight hours of labor constitutes a day’s work. Any work in excess of eight
17 hours in one workday and any work in excess of 40 hours in any one
18 workweek and the first eight hours worked on the seventh day of work in
19 any one workweek shall be compensated at the rate of no less than one and
20 one-half times the regular rate of pay for an employee. Any work in excess
21 of 12 hours in one day shall be compensated at the rate of no less than twice
22 the regular rate of pay for an employee. In addition, any work in excess of
23 eight hours on any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an employee. Nothing
in this section requires an employer to combine more than one rate of
overtime compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

24 34. Labor Code § 1194 invalidates any agreement between an employer and an
25 employee to work for less than the minimum or overtime wage required under the applicable
26 Wage Order.

27 35. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
28 than the minimum wage required under the applicable Wage Order for all hours worked during a
payroll period.



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1 45. In addition, Labor Code Section 226.7 states

2 (b) An employer shall not require an employee to work during a meal
3 or rest or recovery period mandated pursuant to an applicable statute, or
4 applicable regulation, standard, or order of the Industrial Welfare
5 Commission, the Occupational Safety and Health Standards Board, or the
6 Division of Occupational Safety and Health.

7 (c) If an employer fails to provide an employee a meal or rest or
8 recovery period in accordance with a state law, including, but not limited
9 to, an applicable statute or applicable regulation, standard, or order of the
10 Industrial Welfare Commission, the Occupational Safety and Health
11 Standards Board, or the Division of Occupational Safety and Health, the
12 employer shall pay the employee one additional hour of pay at the
13 employee's regular rate of compensation for each workday that the meal or
14 rest or recovery period is not provided.

15 46. Pursuant to the Wage Order, Plaintiff and the class members were entitled to net
16 rest periods of at least ten minutes for each four hours worked, or major fraction thereof.

17 47. Defendants failed to provide Plaintiff with all required rest periods free from any
18 work or duties to in accordance with the Wage Order. Plaintiff is informed and believes and
19 thereon alleges that, at relevant times within the applicable limitations period, Defendants had a
20 policy, practice, or a lack of a policy which resulted in Defendants not providing the class with
21 all rest periods required by California law.

22 48. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for workdays in which one or more rest periods were not provided to him.
24 Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable
25 limitations period, Defendants have maintained a policy, practice, or a lack of a policy which
26 resulted in Defendants not providing the class with additional wages for all workdays on which
27 one or more rest periods were not provided to them as required by California Labor Code § 226.7.

28 49. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
 damages in amounts subject to proof to the extent they were not paid additional wages owed for
 all rest periods not provided to them.

 50. By reason of the above, Plaintiff and the members of the class are entitled to
 premium wages for workdays in which one or more rest breaks were not provided to them
 pursuant to California Labor Code § 226.7.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

51. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

52. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

53. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

54. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

55. In relevant part, Section 11 of the Wage Order states

“Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the



employee's regular rate of compensation for each workday that the meal period is not provided."

56. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

57. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the class members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

58. During the relevant time period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period free from any work or duties to for each five (5) hour work period. Defendants thus failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order. Defendants also arbitrarily deducted 30-minutes of worktime from Plaintiff's daily time records. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all meal periods required by California Labor Code § 512 and the Wage Order, and for deducting daily 30 minutes of time spent on duty from time Plaintiff and the Class Members' time records.

59. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all workdays in which one or more meal periods were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all workdays on



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1 which one or more meal periods were not provided to them as required by California Labor Code
2 § 226.7.

3 60. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
4 damages in amounts subject to proof to the extent they were not paid additional wages owed for
5 all meal periods not provided to them.

6 61. By reason of the above, Plaintiff and the members of the class are entitled to
7 premium wages for workdays in which one or more meal periods were not provided to them
8 pursuant to California Labor Code § 226.7.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code §§ 1198 and 2802)**

12 **(By Plaintiff and the Class against all Defendants)**

13 62. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 63. At all relevant times, Plaintiff and the class have been employees of Defendants
15 and entitled to the benefits and protections of the California Labor Code §§ 1198, 2802 and the
16 Wage Order.

17 64. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
18 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
19 consequence of the discharge of his or her duties."

20 65. Labor Code § 1198 makes it unlawful for an employer to employ an employee
21 under conditions that violate the Wage Order.

22 66. Defendants did not fully reimburse Plaintiff and the Class Members for all the
23 mileage and travel expenses they incurred in the performance of their job duties and necessary
24 for such performance.

25 67. By reason of the above, Plaintiff and the members of the class are entitled to
26 reimbursement for all necessary expenditures and losses and interest due and owing to within four
27 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
28 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

69. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

70. Pursuant to California Labor Code § 226(a), Plaintiff and the class were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

71. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name



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1 and address of the legal entity that secured the services of the employer during the pay period;
2 and

3 D. The name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a social security number.

5 73. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
6 means a reasonable person would be able to readily ascertain the information without reference
7 to other documents or information.

8 74. As alleged herein, Defendants failed to pay Plaintiff and the class members (1) all
9 overtime premium wages, (2) premium wages for unprovided rest and/or meal periods, (3) wage
10 deductions for partial day absences, and (4) pay card transaction deductions. As a result,
11 Defendants have failed to properly and accurately itemize each employee’s gross wages earned,
12 net wages earned, the total hours worked, the corresponding number of hours worked by
13 employees and other requirements of California Labor Code § 226. As a result, Defendants have
14 violated California Labor Code § 226.

15 75. Defendants’ failure to provide Plaintiff and the class with accurate wage
16 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
17 class with accurate wage statements but intentionally provided wage statements that Defendants
18 knew were not accurate.

19 76. As a result of being provided with inaccurate wage statements by Defendants,
20 Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage statements
21 were violated and they were misled about the amount of wages they had actually earned and were
22 owed. In addition, the absence of accurate information on their wage statements prevented
23 immediate challenges to Defendants’ unlawful pay practices, has required discovery and
24 mathematical computations to determine the amounts of wages owed, has caused difficulty and
25 expense in attempting to reconstruct time and pay records and/or has led to the submission of
26 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
27 and the Class were not able to ascertain from the wage statements whether Defendants complied
28 with their obligations under California Labor Code § 226(a).

77. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are
entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial
pay period in which a violation of California Labor Code § 226(a) occurred and one hundred



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dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff and the Class against all Defendants)

78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

79. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

80. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages and reimburse them for all expenses.

81. Labor Code § 221 prohibits an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for doing so.

82. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the class members have suffered injuries in fact and lost money or property. Plaintiff and the class members were deprived of wages for all rest and meal periods not provided to them, unlawful deductions, and for all overtime hours worked for which they did not receive wages at the correct rates of pay. Defendants also deprived the Plaintiff and the Class Members with full and adequate reimbursement for all travel and mileage expenses they incurred.

83. Pursuant to California Business & Professions Code § 17203, Plaintiff and the class are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

84. Plaintiff and the class are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the



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substantial benefit doctrine and/or the common fund doctrine.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

86. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203, and the Wage Order.

87. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

88. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

89. By failing to pay (1) all overtime premium wages, (2) premium wages for unprovided rest and/or meal periods, (3) wage deductions for partial day absences, and (4) daily 30-minute work time deductions to Plaintiff and the class members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

90. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

91. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the class members all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

92. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the class members, in amounts subject to proof not to exceed 30 days of waiting time penalties for each class member.

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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff and the Class against all Defendants)

93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

94. The “Aggrieved Employees” are all members of the above-defined Class whom Defendants employed during the period beginning August 20, 2019, and ending on the date that final judgment is entered in this action.

95. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

96. Defendants paid wages to employees on bi-weekly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.



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1 97. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 221, 226, 226.7, 450, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

3 98. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
4 behalf of themselves and other current or former employees, to bring a civil action to recover civil
5 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

6 99. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
7 entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§
8 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 in the following
9 amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
12 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
13 (penalty amounts established by California Labor Code § 210).

14 B. For violations of California Labor Code § 221, one hundred dollars
15 (\$100.00) for each Aggrieved Employee for each initial violation of California Labor Code §
16 221 (if found to be neither willful nor intentional) and two hundred dollars (\$200.00) for each
17 Aggrieved Employee (if found to be either willful or intentional) and for each subsequent
18 violation of California Labor Code § 221 (regardless of whether they are found to be willful or
19 intentional) (penalties set by California Labor Code § 225.5).

20 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
21 (\$250.00) for each Aggrieved Employee for initial violations and one thousand dollars
22 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
23 established by California Labor Code §§ 226.3).

24 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
25 (\$50.00) for each Aggrieved Employee for initial violations and one hundred dollars (\$100.00)
26 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
27 established by California Labor Code § 558).

28 E. For violations of California Labor Code § 1174, five hundred dollars
(\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
California Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars



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1 (\$100.00) for each Aggrieved Employee per pay period for each initial and intentional violation
2 and two hundred fifty dollars (\$250.00) for each Aggrieved Employee per pay period for each
3 subsequent violation (regardless of whether the initial violations were intentionally committed)
4 (penalty amounts established by California Labor Code §1197.1).

5 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 450,
6 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
7 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved Employee
8 per pay period for each subsequent violation (penalty amounts established by California Labor
Code § 2699(f)(2)).

9 100. Plaintiff has complied with the procedures for bringing suit specified in California
10 Labor Code § 2699.3. By letter dated August 20, 2020, Plaintiff filed written notice online with
11 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
12 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations. Plaintiff accompanied
14 his individual letter with a fee in the amount of \$75.00. A true and correct copy of Plaintiff’s
15 written notice to the LWDA, dated August 20, 2020, is attached hereto as **Exhibit A**. The LWDA
has not responded to Plaintiff’s letter.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and judgment
18 against Defendants as follows:

19 A. An order that the action be certified as a class action with respect to
20 Plaintiff’s claims for violations of federal and California law;

21 B. An order that Plaintiff be appointed class representative;

22 C. An order that counsel for Plaintiff be appointed class counsel;

23 D. Unpaid wages;

24 E. Declaratory relief;

25 F. Injunctive and equitable relief;

26 G. General damages;

27 H. Actual damages;

28 I. Statutory damages;

J. Liquidated damages;



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- 1 K. Punitive damages;
2 L. Restitution;
3 M. Statutory penalties;
4 N. Civil Penalties;
5 O. All actual, consequential and incidental financial losses, including but not
6 limited to loss of earnings;
7 P. Pre-judgment and post-judgment interest;
8 Q. Costs of suit;
9 R. Expert witness fees;
10 S. Back pay for Plaintiff;
11 T. Front pay for Plaintiff;
12 U. Reasonable attorney's fees; and
13 V. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

14 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
15 on all issues so triable.

16 Respectfully submitted,

THE SPIVAK LAW FIRM

17 Dated: October 26, 2020

18 By: 
19 DAVID SPIVAK
20 CARL KAPLAN
21 Attorneys for Plaintiff, SHANE ROLLMAN,
22 and all others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

August 20, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Shane Rollman / AMS Retail Solutions*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Shane Rollman (hereafter “Rollman”) provides notice on behalf of himself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to field marketing representative employees and employees in comparable positions (hereafter “Aggrieved Employees”) by American Merchandising Specialists, Inc., a North Carolina corporation, Automated Management Systems, Inc., a Virginia corporation, AMS Retail Solutions 401k Plan, an entity of unknown form, and AMS Retail Solutions, an entity of unknown form (hereafter collectively referred to as “AMS”), of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 450, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

At all relevant times, AMS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Rollman and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

In or about January of 2019, AMS first employed Rollman to work as a field marketing representative to drive major appliance sales by providing brand advocacy, training and product knowledge to personnel and managers. AMS also employed Rollman to provide subject matter expertise for products as well as “in-depth of knowledge” of discounts and purchase programs. Rollman’s duties included establishing relationships with store associates and management teams to increase sales. AMS expected him and others in comparable positions to visit its customers to promote vendor products, perform sales/support services and maintain product displays in assigned stores; provide new product information including receiving customer feedback regarding vendor products and services; facilitate sales, marketing and promotional campaigns by acquainting accounts with the latest sales techniques.; regularly conduct training sessions at both store and district levels; and to build, maintain, and update customer database as required. AMS compensated Rollman at an hourly rate of pay of \$19.75. AMS employed Rollman continuously from his date of hire through August 26, 2019. AMS at all times issued wages to Rollman and the Aggrieved Employees on a biweekly basis. AMS employed Rollman continuously in this capacity until his employment ended on August 26, 2019.

At all relevant times, AMS required Rollman and the Aggrieved Employees to work more than eight hours per day. However, it prohibited them from recording more than seven hours of daily work for payroll purposes. AMS knew that Rollman and the Aggrieved Employees could not complete all of their required tasks within seven hours. At all relevant times, AMS required Rollman and the Aggrieved Employees to travel in their personal automotive vehicles between customers locations each day, though it did not compensate them for their travel time and did not reimburse them for all of the mileage they incurred. At all relevant times, AMS required Rollman and the Aggrieved Employees to remain “on-call” when they were not on work shifts and to respond immediately to work-related calls and travel to customers as necessary in response. However, it did not compensate them for such time on-call, even if such time involved several phone calls with AMS customers.

At relevant times within the applicable limitations period, AMS failed to provide Rollman and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the tenth hour worked. The work AMS expected Rollman and the Aggrieved Employees to complete each day prevented them from taking such meal periods. AMS automatically deducted 30 minutes of daily work time from the time records of Rollman and the Aggrieved Employees regardless of whether they were able to take a meal period.

AMS further failed to authorize and permit Rollman and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof. It was impossible for Rollman and the Aggrieved Employees to take rest periods because AMS expected them to monitor their mobile communication devices at all times. Additionally, the work AMS expected Rollman and the Aggrieved Employees to complete each day prevented them from taking such rest periods. AMS did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement. Neither Rollman nor any of the Aggrieved Employees entered into a written waiver of their second meal period with AMS. AMS also failed to pay Rollman and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal and rest periods.

As set forth below, Rollman alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and Aggrieved Employees:

- a) AMS failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and double time pay due to off-the-clock work and time deducted from daily work hours for 30-minute off-duty meal periods that did not take place;
- b) AMS required Rollman and Aggrieved Employees to take on-duty meal periods;

- c) AMS failed to provide Rollman and Aggrieved Employees with off-duty meal periods;
- d) AMS failed to provide Rollman and Aggrieved Employees with rest breaks periods as required by law;
- e) AMS failed to compensate Rollman and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more meal periods in a workday;
- f) AMS failed to compensate Rollman and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more rest periods in a workday;
- g) AMS failed to indemnify Rollman and Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, travel expenses and mileage;
- h) AMS collected and/or received wages from the paychecks of Rollman and Aggrieved Employees for as a result of arbitrary 30-minute deductions from daily time records;
- i) AMS failed to provide Rollman and Aggrieved Employees with accurate and complete wage statements;
- j) AMS failed to timely pay Rollman and Aggrieved Employees all earned and unpaid wages during employment at SES; and
- k) AMS failed to timely pay Rollman and Aggrieved Employees, who are former employees, all earned and unpaid wages at the time of separation from employment.

Accordingly, Rollman now seeks civil penalties on behalf of himself and Aggrieved Employees based on AMS's alleged violations of the California Labor Code and the Wage Order.

Wage Order 4

Wage Order 4 applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis." § 1. At all relevant times during the applicable limitations period, Rollman was employed by AMS as a field marketing representative to provide technical training to the employees of AMS customers about the sale of Samsung products. Accordingly, Rollman and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked **(Lab Code §§ 510, 1194, 1197, and 1198)**

Under California Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(K) of the Wage Order states,

"Hours worked" means 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[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, non-discretionary bonuses and commissions. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, AMS knowingly failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double time wages for the work they performed and deducted wages for 30-minute meal periods that never took place.

Accordingly, Rollman seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

AMS has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Rollman and Aggrieved Employees as required by law. Additionally, AMS required Rollman and Aggrieved Employees to take on duty

meal periods. As a result, AMS violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each aggrieved employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Section 9 of the Wage Order:

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform”

includes wearing apparel and accessories of distinctive design or color.

At all relevant times during the applicable limitations period, AMS required Rollman and Aggrieved Employees to travel in personal vehicles without complete reimbursement for mileage and other travel expenses. AMS failed to fully indemnify Rollman and Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California Labor Code § 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

At all relevant times during the applicable limitations period, AMS automatically deducted 30 minutes of work time from the time records of Rollman even when they had not taken a duty-free 30-minute meal period. As a result, AMS collected and/or received part of its employees' wages in violation of California Labor Code § 221.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each

subsequent violation of California Labor Code § 221 (penalties set by California Labor Code § 225.5).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

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

As alleged herein, AMS failed to provide Rollman and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not

limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. With regard to such wages, unrecorded hours, and hours deducted from payroll, AMS failed to properly and accurately itemize each employees' gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, AMS has violated California Labor Code § 226.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, AMS failed to provide Rollman and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Rollman and Aggrieved Employees all wages within the

time periods set by California Labor Code § 204. As a result, AMS has violated California Labor Code § 204.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each aggrieved employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code § § 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than 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. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, AMS failed to provide Rollman and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks

and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Rollman and Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, AMS has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Rollman seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 4 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided

to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

AMS failed to pay Rollman and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. With regard to such wages, unrecorded hours worked, and deducted hours, AMS has willfully failed to maintain the records of them required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods. Accordingly, Rollman seeks civil penalties from AMS on behalf of himself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

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Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Shane Rollman
Walter Haines, Esq.

American Merchandising Specialists, Inc.
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1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Monday, October 26, 2020, I served the foregoing document described
11 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
12 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

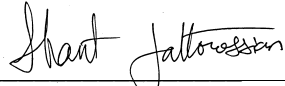
13 **Thalia S. Rofos**
14 **Lewis Brisbois Bisgaard & Smith, LLP**
15 **Thalia.Rofos@lewisbrisbois.com**
16 **650 Town Center Drive, Suite 1400,**
17 **Costa Mesa, CA 92626**

18 XXXX (BY EMAIL) Based on a court order or an agreement of the parties to
19 accept electronic service, I caused the documents to be sent to the persons
20 at the electronic service addresses listed above from my electronic service
address shant@spivaklaw.com.

21 EXECUTED on Monday, October 26, 2020, at Pasadena, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 _____ (Federal) I declare that I am employed in the office of a member of the
25 bar of this court at whose direction the service was made.

26
27
28

SHANT JALTOROSSIAN