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

ROGER WESTFALL, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

NAES CORPORATION; NAES POWER
CONTRACTORS, INC.; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-20-101796

*Assigned for All Purposes to the:
Honorable Thomas S. Clark
Department 17*

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Violation of Business and Professions Code §§ 17200, *et seq.*; and
7. Enforcement of Labor Code § 2698, *et. seq.* (PAGA).

1 Plaintiff Roger Westfall, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Roger Westfall (“Plaintiff”) brings this putative class action against
5 defendants NAES Corporation; NAES Power Contractors, Inc.; and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of himself individually and on behalf of non-
7 exempt employees employed by Defendants throughout California.

8 2. Defendants are in the business of power plant maintenance and construction.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to pay overtime wages at the proper rates;
16 (b) Failing to provide meal periods or compensation in lieu thereof;
17 (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
18 (d) Failing to provide accurate itemized wage statements; and
19 (e) Failing to pay all wages due upon separation of employment.

20 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
21 behalf of himself and all others similarly situated in California to recover, among other things,
22 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
23 to Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5 1194, and
24 1198, PAGA, and California Code of Civil Procedure § 1021.5.

25 **JURISDICTION AND VENUE**

26 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The
27 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
28 of the Superior Court and will be established according to proof at trial.

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

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

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

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

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

19. Plaintiff's proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly employed as non-exempt employees by Defendants in the State of California from April 6, 2016¹ to the date of class certification.

20. Plaintiff also seeks to certify the following Subclass of employees:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants from April 6, 2017 to the date of class certification.

21. Members of the Class and Subclass described above will be collectively referred

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
2 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
3 specific theories of liability.

4 22. This action has been brought and may properly be maintained as a class action
5 under the California Code of Civil Procedure § 382 because there are common questions of law
6 and fact as to the Class that predominate over questions affecting only individual members
7 including, but not limited to:

- 8 (a) Whether Defendants paid Plaintiff and class members overtime compensation at
9 the proper rates;
- 10 (b) Whether Defendants deprived Plaintiff and class members of timely meal periods;
- 11 (c) Whether Defendants deprived Plaintiff and class members of rest breaks;
- 12 (d) Whether Defendants failed to timely pay Plaintiff and former class members all
13 wages due upon termination or within 72 hours of resignation;
- 14 (e) Whether Defendants failed to furnish Plaintiff and class members with accurate,
15 itemized wage statements; and
- 16 (f) Whether Defendants engaged in unfair business practices in violation of Business
17 & Professions Code §§ 17200, *et seq.*

18 23. There is a well-defined community of interest in this litigation and the Class is
19 readily ascertainable:

- 20 (a) Numerosity: The members of the Class are so numerous that joinder of all
21 members is impractical. Although the members of the Class are unknown
22 to Plaintiff at this time, on information and belief, the Class is estimated to
23 be greater than 100 individuals. The identity of the class members are
24 readily ascertainable by inspection of Defendants’ employment and payroll
25 records.
- 26 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
27 claims (or defenses, if any) of the Class because Defendants’ failure to
28 comply with the provisions of California wage and hour laws entitled each

1 class member to similar pay, benefits and other relief. The injuries
2 sustained by Plaintiff are also typical of the injuries sustained by the Class
3 because they arise out of and are caused by Defendants' common course of
4 conduct as alleged herein.

5 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
6 and protect the interests of all members of the Class because it is in his best
7 interest to prosecute the claims alleged herein to obtain full compensation
8 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
9 class counsel, are competent and experienced in litigating large
10 employment class actions and are versed in the rules governing class action
11 discovery, certification and settlement. Plaintiff has incurred and,
12 throughout the duration of this action, will continue to incur attorneys' fees
13 and costs that have been and will be necessarily expended for the
14 prosecution of this action for the substantial benefit of each class member.

15 (d) Superiority: The nature of this action makes the use of class action
16 adjudication superior to other methods. A class action will achieve
17 economies of time, effort and expense as compared with separate lawsuits,
18 and will avoid inconsistent outcomes because the same issues can be
19 adjudicated in the same manner and at the same time for each Class. If
20 appropriate this Court can, and is empowered to, fashion methods to
21 efficiently manage this case as a class action.

22 (e) Public Policy Considerations: Employers in the State of California and
23 other states violate employment and labor laws every day. Current
24 employees are often afraid to assert their rights out of fear of direct or
25 indirect retaliation. Former employees are fearful of bringing actions
26 because they believe their former employers might damage their future
27 endeavors through negative references and/or other means. Class actions
28 provide the class members who are not named in the complaint with a

1 type of anonymity that allows for the vindication of their rights at the
2 same time as affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
5 persons as non-exempt employees.

6 25. Plaintiff was employed in a non-exempt position at Defendants' California
7 business location(s).

8 26. Defendants continue to employ non-exempt employees within California.

9 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
11 who were knowledgeable about California's wage and hour laws, employment and personnel
12 practices and the requirements of California law.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants
14 improperly calculated the overtime rate of pay for Plaintiff and Class Members because the
15 rates did not include non-discretionary wages, including, but not limited to, bonuses, shift
16 premiums, and/or other incentive pay into the computation of their regular rate of pay for
17 purposes of calculating the overtime rate of pay.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive all required meal
20 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
21 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and
22 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
23 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
24 when they did not receive a timely meal period.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive all rest breaks or
27 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
28 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff

1 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
2 at Plaintiff and class members' regular rate of pay when a rest break was missed.

3 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive itemized wage
5 statements that accurately showed the employer name, their gross and net wages earned,
6 inclusive dates of pay periods, total hours worked, and all applicable hourly rates in effect and
7 the number of hours worked at each hourly rate in accordance with California law. In violation
8 of the Labor Code, Plaintiff and class members were not provided with accurate itemized wage
9 statements.

10 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
12 payment of wages due upon separation of employment. In violation of the Labor Code,
13 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
14 permissible time periods.

15 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known they had a duty to compensate Plaintiff and class members, and Defendants
17 had the financial ability to pay such compensation but willfully, knowingly and intentionally
18 failed to do so all in order to increase Defendants' profits.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES**

21 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order § 3)**

22 34. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 35. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
25 unlawful to employ persons without compensating them at a rate of pay either one and one-half
26 or two times the person's regular rate of pay, depending on the number of hours worked by the
27 person on a daily or weekly basis.

28 36. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time

1 period, Defendants were required to compensate Plaintiff and class members for all overtime
2 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
3 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
4 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
5 the seventh day of any work week, or after twelve (12) hours in any work day.

6 37. Plaintiff and class members were non-exempt employees entitled to the
7 protections of California Labor Code §§ 510 and 1194.

8 38. During the relevant time period, Defendants failed to pay Plaintiff and class
9 members overtime wages at the correct rate because they failed to include non-discretionary
10 wages, including, but not limited to, bonuses, cash in lieu of benefits, shift premiums, and/or
11 other incentive pay in the computation of their overtime rate of pay, which caused Plaintiff and
12 Class Members to not be paid all overtime wages owed.

13 39. In violation of state law, Defendants have knowingly and willfully refused to
14 perform their obligations and compensate Plaintiff and class members for all wages earned as
15 alleged above.

16 40. Defendants' failure to pay Plaintiff and class members the unpaid balance of
17 overtime compensation, as required by California law, violates the provisions of Labor Code
18 §§ 510 and 1198, and is therefore unlawful.

19 41. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
20 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

24 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 43. Labor Code § 226.7 provides that no employer shall require an employee to work
27 during any meal period mandated by the IWC Wage Orders.

28 44. Section 11 of the applicable IWC Wage Order states, "no employer shall employ

1 any person for a work period of more than five (5) hours without a meal period of not less than
2 30 minutes, except that when a work period of not more than six (6) hours will complete the
3 day's work the meal period may be waived by mutual consent of the employer and the
4 employee."

5 45. Labor Code § 512(a) provides that an employer may not require, cause or permit
6 an employee to work for a period of more than five (5) hours per day without providing the
7 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
8 the total work period per day of the employee is not more than six (6) hours, the meal period
9 may be waived by mutual consent of both the employer and the employee.

10 46. Labor Code § 512(a) also provides that an employer may not employ an
11 employee for a work period of more than ten (10) hours per day without providing the employee
12 with a second meal period of not less than thirty (30) minutes, except that if the total hours
13 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
14 consent of the employer and the employee only if the first meal period was not waived.

15 47. During the relevant time period, Plaintiff and class members did not receive
16 compliant meal periods for each five hours worked per day.

17 48. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
18 an employer to pay an employee one additional hour of pay at the employee's regular rate of
19 compensation for each work day that a meal period is not provided.

20 49. At all relevant times, Defendants failed to pay Plaintiff and class members meal
21 period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section 11
22 of the applicable IWC Wage Order.

23 50. As a result of Defendants' failure to pay Plaintiff and class members an
24 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
25 suffered and continue to suffer a loss of wages and compensation.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

4 51. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 52. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 53. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period” and the “authorized rest period time shall be based on the total
11 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

13 54. During the relevant time period, Plaintiff and class members did not receive a ten
14 (10) minute rest period for every four (4) hours or major fraction thereof worked.

15 55. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
16 requires an employer to pay an employee one additional hour of pay at the employee’s regular
17 rate of compensation for each work day that the rest period is not provided.

18 56. At all relevant times, Defendants failed to pay Plaintiff and class members rest
19 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of
20 the applicable IWC Wage Order.

21 57. As a result of Defendants’ failure to pay Plaintiff and class members an
22 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
23 suffered and continue to suffer a loss of wages and compensation.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(Violation of Labor Code § 226)**

27 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 59. Labor Code § 226(a) requires Defendants to provide each employee with an
2 accurate wage statement in writing showing nine pieces of information, including: (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
4 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee may be
6 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and the last four digits of his or
8 her social security number or an employee identification number other than a social security
9 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at
11 each hourly rate by the employee.

12 60. During the relevant time period, Defendants have knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
14 and class members. The deficiencies include, among other things, the failure to correctly state
15 the employer's name, and total hours worked, among other deficiencies.

16 61. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
17 and class members have suffered injury and damage to their statutorily protected rights.
18 Specifically, Plaintiff and class members have been injured by Defendants' intentional
19 violation of California Labor Code § 226(a) because they were denied both their legal right to
20 receive, and their protected interest in receiving, accurate itemized wage statements under
21 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
22 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
23 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
24 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
25 recover the underpayment of wages from Defendants.

26 62. California Labor Code § 226(a) requires an employer to pay the greater of all
27 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
28 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,

1 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
2 comply with California Labor Code § 226(a).

3 63. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
4 and class members from knowing, understanding and disputing the wages paid to them, and
5 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
6 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
7 class members have suffered an injury, and the exact amount of damages and/or penalties is all
8 in an amount to be shown according to proof at trial.

9 64. Plaintiff and class members are also entitled to injunctive relief under California
10 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
11 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

14 **WITHIN THE REQUIRED TIME**

15 **(Violation of Labor Code §§ 201, 202 and 203)**

16 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

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

24 67. During the relevant time period, Defendants willfully failed to pay Plaintiff and
25 Waiting Time Subclass members all their earned wages upon termination including, but not
26 limited to, proper minimum wages and overtime compensation, either at the time of discharge
27 or within seventy-two (72) hours of their leaving Defendants' employ.

28 68. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all

1 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
2 Defendants' employ is in violation of Labor Code §§ 201 and 202.

3 69. California Labor Code § 203 provides that if an employer willfully fails to pay
4 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
5 and 202, then the wages of the employee shall continue as a penalty from the due date at the
6 same rate until paid or until an action is commenced; but the wages shall not continue for more
7 than thirty (30) days.

8 70. Plaintiff and Waiting Time Subclass members are entitled to recover from
9 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
10 members' regular daily wages for each day they were not paid, at their regular hourly rate of
11 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

12 **SIXTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

14 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
15 though fully set forth herein.

16 72. Defendants' conduct, as alleged herein, has been and continues to be unfair,
17 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
18 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

19 73. Defendants' activities, as alleged herein, violate California law and constitute
20 unlawful business acts or practices in violation of California Business and Professions Code
21 §§ 17200, *et seq.*

22 74. A violation of Business and Professions Code §§ 17200, *et seq.* may be
23 predicated on the violation of any state or federal law.

24 75. Defendants' policies and practices have violated state law in at least the
25 following respects:

26 (a) Failing to pay all overtime wages at the proper rate to Plaintiff and class
27 members in violation of Labor Code §§ 510, 1194 and 1198;

28 (b) Failing to provide timely meal periods without paying Plaintiff and class

members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

(c) Failing to authorize or permit rest breaks without paying Plaintiff and class members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;

(d) Failing to provide Plaintiff and class members with accurate itemized wage statements in violation of Labor Code § 226; and

(e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

76. Defendants intentionally avoided paying Plaintiff and class members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

77. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an

78. award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

SEVENTH CAUS OF ACTION

ENFORCEMENT OF LABOR CODE § 2698, ET. SEQ. ("PAGA")

79. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

80. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

1 81. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
5 period in which Defendant violated these provisions of the Labor Code.

6 82. Defendants' conduct violates numerous Labor Code sections including, but not
7 limited to, the following:

- 8 (a) violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1194, and 1198
9 for failure to timely pay all earned wages (including minimum wages and
10 overtime wages) owed to Plaintiff and other aggrieved employees during
11 employment and upon separation of employment as herein alleged;
- 12 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal
13 periods to Plaintiff and other aggrieved employees and failure to pay
14 premium wages for missed meal periods as herein alleged;
- 15 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
16 and other aggrieved employees and failure to pay premium wages for
17 missed rest periods as herein alleged;
- 18 (d) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
19 itemized wage statements to Plaintiff and other aggrieved employees as
20 herein alleged (excluding subsection (a)(8) of Labor Code Section 226);
- 21 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
22 accurate records.

23 83. As set forth above, Defendants violated numerous provisions of the Labor Code
24 regulating the hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
25 seeks the recovery of civil penalties pursuant to PAGA.

26 84. Plaintiff is an "aggrieved employee" because he was employed by the alleged
27 violator and had one or more of the alleged violations committed against him, and therefore is
28 properly suited to represent the interests of all other aggrieved employees.

1 85. Plaintiff exhausted the procedural requirements under Labor Code § 2699.3 as to
2 Defendants and is therefore able to pursue a claim for civil penalties on behalf of himself and all
3 other aggrieved employees under PAGA.

4 86. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
5 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
6 cited above.

7 87. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
8 herein.

9 **PRAYER FOR RELIEF**

10 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
11 and judgment against Defendants, jointly and severally, as follows:

12 1. For certification of this action as a class action under California Code of Civil
13 Procedure § 382, including certifying the Class and Subclass alleged by Plaintiff;

14 2. For appointment of Roger Westfall as the class representative;

15 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

16 4. For compensatory damages in an amount according to proof at trial, with
17 interest thereon;

18 5. For an award of damages in the amount of unpaid compensation including, but
19 not limited to, unpaid wages, benefits, and penalties;

20 6. For economic and/or special damages in an amount according to proof at trial,
21 with interest thereon;

22 7. For liquidated damages pursuant to Labor Code § 1194.2

23 8. For statutory penalties to the extent permitted by law, including those pursuant
24 to the Labor Code and IWC Wage Orders;

25 9. For injunctive relief as provided by the California Labor Code and California
26 Business and Professions Code §§ 17200, *et seq.*;

27 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

28 11. For an order requiring Defendants to restore and disgorge all funds to each

1 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
2 or fraudulent and, therefore, constituting unfair competition under Business and Professions
3 Code §§ 17200, *et seq.*;

4 12. For civil penalties pursuant to PAGA, according to proof at trial;

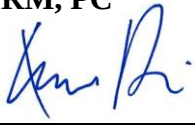
5 13. For pre-judgment interest;

6 14. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
7 by law, including pursuant to Code of Civil Procedure § 1021.5 Labor Code §§ 226(e) and
8 1194; and

9 15. For such other relief as the Court deems just and proper.

10 Dated: October 27, 2020

AEGIS LAW FIRM, PC

11
12 By:  _____

Alexander G.L. Davies
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On October 28, 2020, I served the foregoing document entitled:

**• FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION
COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Karin M. Cogbill
Jonathan A. Heller
HOPKINS & CARLEY, ALC
70 South First Street
San Jose, CA 95113
T: 408.286.9600
F: 408.998.4790
kcogbill@hopkinscarley.com

Attorneys for Defendant:

NAES CORPORATION; NAES POWER CONTRACTORS, INC.

☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

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

3 Executed on October 28, 2020, at Irvine, California.

4 
5 _____
6 Andrea Drocco
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