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Kern County Superior Court
By Vanesa Jackson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

ROGER WESTFALL and JOSEPH M.
ATWELL, as individuals, and on behalf of
all others similarly situated

Plaintiff,

vs.

NAES CORPORATION; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-20-101796

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

**SECOND 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 Plaintiffs Roger Westfall and Joseph M. Atwell, as individuals, and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Roger Westfall and Joseph M. Atwell, (collectively “Plaintiffs”) bring
5 this putative class action against defendant NAES Corporation; and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of themselves 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, Plaintiffs allege 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. Plaintiffs are informed and believe, 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 compensate class members for required work off-the-clock;
17 (c) Failing to provide meal periods or compensation in lieu thereof;
18 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
19 (e) Failing to provide accurate itemized wage statements; and
20 (f) Failing to pay all wages due upon separation of employment.

21 5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf
22 of himself and all others similarly situated in California to recover, among other things, unpaid
23 wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor
24 Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197,
25 1198, 2698 et seq. (“PAGA”), and California Code of Civil Procedure § 1021.5.

26 **JURISDICTION AND VENUE**

27 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The
28 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits

1 of the Superior Court and will be established according to proof at trial.

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

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

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

14 **THE PARTIES**

15 10. Plaintiff Roger Westfall ("Plaintiff Westfall") is a citizen of California. Plaintiff
16 Westfall was employed by Defendants during the Class Period in California.

17 11. Plaintiff Joseph M. Atwell ("Plaintiff Atwell") is a citizen of California. Plaintiff
18 Atwell was employed by Defendants during the Class Period in California.

19 12. Plaintiffs are informed and believe, and thereon alleges, that Defendants at all
20 times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code
21 and IWC Wage Orders, whose employees were and are engaged throughout this county and the
22 State of California.

23 13. Plaintiffs are informed and believe, and thereon alleges, that Defendants at all
24 times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code
25 and IWC Wage Orders, whose employees were and are engaged throughout this county and the
26 State of California.

27 14. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
28 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

1 Complaint and serve such fictitiously named defendants once their names and capacities become
2 known.

3 15. Plaintiffs are informed and believe, and thereon alleges, that each defendant acted
4 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
6 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
7 the employer and/or joint employer of Plaintiff and the class members.

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

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

17 18. Plaintiffs are informed and believe, and thereon alleges, that each of said
18 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
19 omissions, occurrences and transactions alleged herein.

20 **CLASS ACTION ALLEGATIONS**

21 19. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
22 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
23 and Professions Code §§ 17200 and IWC Wage Order violations.

24 20. All claims alleged herein arise under California law for which Plaintiffs seek relief
25 authorized by California law.

26 21. Plaintiffs' proposed Class consists of and is defined as follows:

27 Class

28 All California citizens currently or formerly employed as non-exempt employees

1 by Defendants in the State of California from April 6, 2016¹ to the date of class
2 certification.

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

4 Waiting Time Subclass

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

7 23. Members of the Class and Subclass described above will be collectively referred
8 to as “class members.” Plaintiffs reserve the right to establish other or additional subclasses, or
9 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
10 specific theories of liability.

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

- 15 (a) Whether Defendants paid Plaintiffs and class members overtime compensation at
16 the proper rates;
- 17 (b) Whether Defendant failed to pay Plaintiffs and other class members for required off-
18 the-clock work;
- 19 (c) Whether Defendants deprived Plaintiffs and class members of timely meal periods;
- 20 (d) Whether Defendants deprived Plaintiffs and class members of rest breaks;
- 21 (e) Whether Defendants failed to timely pay Plaintiffs and former class members all
22 wages due upon termination or within 72 hours of resignation;
- 23 (f) Whether Defendants failed to furnish Plaintiffs and class members with accurate,
24 itemized wage statements; and
- 25 (g) Whether Defendants engaged in unfair business practices in violation of Business
26 & Professions Code §§ 17200, *et seq.*

27 25. There is a well-defined community of interest in this litigation and the Class is

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

1 readily ascertainable:

- 2 (a) Numerosity: The members of the Class are so numerous that joinder of all
3 members is impractical. Although the members of the Class are unknown to
4 Plaintiff at this time, on information and belief, the Class is estimated to be
5 greater than 100 individuals. The identity of the class members are readily
6 ascertainable by inspection of Defendants' employment and payroll records.
- 7 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
8 claims (or defenses, if any) of the Class because Defendants' failure to
9 comply with the provisions of California wage and hour laws entitled each
10 class member to similar pay, benefits and other relief. The injuries sustained
11 by Plaintiffs are also typical of the injuries sustained by the Class because
12 they arise out of and are caused by Defendants' common course of conduct
13 as alleged herein.
- 14 (c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent
15 and protect the interests of all members of the Class because it is in his best
16 interest to prosecute the claims alleged herein to obtain full compensation
17 and penalties due to him and the Class. Plaintiffs' attorneys, as proposed
18 class counsel, are competent and experienced in litigating large employment
19 class actions and are versed in the rules governing class action discovery,
20 certification and settlement. Plaintiffs have incurred and, throughout the
21 duration of this action, will continue to incur attorneys' fees and costs that
22 have been and will be necessarily expended for the prosecution of this action
23 for the substantial benefit of each class member.
- 24 (d) Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve
26 economies of time, effort and expense as compared with separate lawsuits,
27 and will avoid inconsistent outcomes because the same issues can be
28 adjudicated in the same manner and at the same time for each Class. If

appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

(e) Public Policy Considerations: Employers in the State of California and other states violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

GENERAL ALLEGATIONS

26. At all relevant times mentioned herein, Defendants employed Plaintiffs and other persons as non-exempt employees.

27. Plaintiff Westfall was employed in a non-exempt position at Defendants' California business location(s).

28. Plaintiff Atwell was employed in a non-exempt position at Defendants' California business location(s).

29. Defendants continue to employ non-exempt employees within California.

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

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

1 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive all required meal
3 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate
4 of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC
5 Wage Orders, Plaintiff and class members did not receive all timely meal periods or payment of
6 one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when they did
7 not receive a timely meal period.

8 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive all rest breaks or
10 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
11 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
12 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
13 Plaintiff and class members' regular rate of pay when a rest break was missed.

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

20 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
22 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
23 and Waiting Time Subclass members did not receive payment of all wages within permissible
24 time periods.

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

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

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

4 36. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though
5 fully set forth herein.

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

10 38. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
11 period, Defendants were required to compensate Plaintiff and class members for all overtime
12 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
13 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
14 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
15 day of any work week, or after twelve (12) hours in any work day.

16 39. Plaintiff and class members were non-exempt employees entitled to the
17 protections of California Labor Code §§ 510 and 1194.

18 40. During the relevant time period, Defendants failed to pay Plaintiff and Class
19 Members overtime wages for all overtime hours worked when Plaintiff and Class Members were
20 required to work off-the-clock. To the extent these hours qualify for the payment of overtime wages,
21 Plaintiff and Class Members worked shifts entitling them to overtime wages, but were not paid all
22 overtime wages due.

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

28 42. In violation of state law, Defendants have knowingly and willfully refused to

1 perform their obligations and compensate Plaintiff and class members for all wages earned as
2 alleged above.

3 43. Defendants' failure to pay Plaintiff and class members the unpaid balance of
4 overtime compensation, as required by California law, violates the provisions of Labor Code §§
5 510 and 1198, and is therefore unlawful.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

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

11 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

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

15 47. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
16 any person for a work period of more than five (5) hours without a meal period of not less than
17 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
18 work the meal period may be waived by mutual consent of the employer and the employee."

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

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

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

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

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

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

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PERMIT REST BREAKS**

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

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

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

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

64. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and class members have suffered injury and damage to their statutorily protected rights.

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

65. California Labor Code § 226(a) requires an employer to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, to each employee who was injured by the employer's failure to comply with California Labor Code § 226(a).

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND WITHIN THE REQUIRED TIME

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

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

69. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his 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 intention to quit, in which case the employee is entitled to his wages at the time of quitting.

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

71. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

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

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

SIXTH CAUSE OF ACTION

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

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

75. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights

1 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

2 76. Defendants' activities, as alleged herein, violate California law and constitute
3 unlawful business acts or practices in violation of California Business and Professions Code
4 §§ 17200, *et seq.*

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

7 78. Defendants' policies and practices have violated state law in at least the following
8 respects:

- 9 (a) Failing to pay all wages earned (including minimum wage and overtime
10 wages) to Plaintiff and Class Members in violation of Labor Code §§ 510,
11 1182.12, 1194, 1194.2, 1197, and 1198.
- 12 (b) Failing to pay all overtime wages at the proper rate to Plaintiff and Class
13 Members in violation of Labor Code §§ 510, 1194 and 1198;
- 14 (c) Failing to provide timely meal periods without paying Plaintiff and class
15 members premium wages for every day said meal periods were not
16 provided in violation of Labor Code §§ 226.7 and 512;
- 17 (d) Failing to authorize or permit rest breaks without paying Plaintiff and class
18 members premium wages for every day said rest breaks were not
19 authorized or permitted in violation of Labor Code § 226.7;
- 20 (e) Failing to provide Plaintiff and class members with accurate itemized
21 wage statements in violation of Labor Code § 226; and
- 22 (f) Failing to timely pay all earned wages to Plaintiff and Waiting Time
23 Subclass members upon separation of employment in violation of Labor
24 Code §§ 201, 202 and 203.

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

28 80. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class

1 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
2 during a period that commences four years prior to the filing of the Complaint; an award of
3 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
4 award of costs.

5 SEVENTH CAUS OF ACTION

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

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

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

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

20 84. Defendants' conduct violates numerous Labor Code sections including, but not limited to,
21 the following:

- 22 (a) violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1194, and 1198 for
23 failure to timely pay all earned wages (including minimum wages and
24 overtime wages) owed to Plaintiff and other aggrieved employees during
25 employment and upon separation of employment as herein alleged;
- 26 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
27 to Plaintiff and other aggrieved employees and failure to pay premium wages
28 for missed meal periods as herein alleged;

- 1 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
2 and other aggrieved employees and failure to pay premium wages for missed
3 rest periods as herein alleged;
- 4 (d) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
5 itemized wage statements to Plaintiff and other aggrieved employees as
6 herein alleged (excluding subsection (a)(8) of Labor Code Section 226);
- 7 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
8 records.

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

12 86. Plaintiff is an “aggrieved employee” because he was employed by the alleged
13 violator and had one or more of the alleged violations committed against him, and therefore is
14 properly suited to represent the interests of all other aggrieved employees.

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

18 88. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
19 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
20 above.

21 89. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
22 herein.

23 **PRAYER FOR RELIEF**

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

- 26 1. For certification of this action as a class action under California Code of Civil
27 Procedure § 382, including certifying the Class and Subclass alleged by Plaintiff;
- 28 2. For appointment of Roger Westfall and Roger M. Atwell as the class

1 representatives;

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

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

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

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

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

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

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

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

15 11. For an order requiring Defendants to restore and disgorge all funds to each
16 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
17 or fraudulent and, therefore, constituting unfair competition under Business and Professions
18 Code §§ 17200, *et seq.*;

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

20 13. For pre-judgment interest;

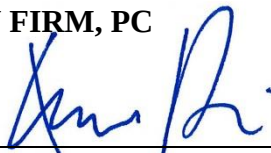
21 14. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by
22 law, including pursuant to Code of Civil Procedure § 1021.5 Labor Code §§ 226(e) and 1194;
23 and

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

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Dated: January 4, 2022

AEGIS LAW FIRM, PC

By: 
Alexander G.L. Davies
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 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.

4 On February 8, 2022, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION
COMPLAINT**

6 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:

7 Karin M. Cogbill
8 Jonathan A. Heller
9 Leticia O. Cvietkovich
10 **HOPKINS & CARLEY, ALC**
70 South First Street
San Jose, CA 95113
T: 408.286.9600
F: 408.998.4790
11 kcogbill@hopkinscarley.com
12 jheller@hopkinscarley.com
13 lcvietkovich@hopkinscarley.com

14 *Attorneys for Defendant:*

15 NAES CORPORATION; NAES POWER CONTRACTORS, INC.

16 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
17 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
18 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
19 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).)

20 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
21 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
22 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

23 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
24 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).)

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

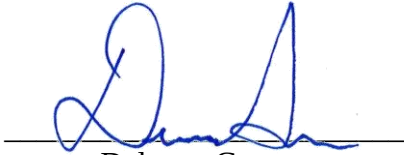
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28 ///

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 February 8, 2022, at Irvine, California.

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Delaney Graves