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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10

11 SHU WU, individually, and on behalf of other
12 members of the general public similarly situated,

13 Plaintiff,

14 vs.

15 FERROVIAL SERVICES
INFRASTRUCTURE INC. f/k/a
16 BROADSPECTRUM INFRASTRUCTURE
INC. f/k/a TRANSFIELD SERVICES
17 INFRASTRUCTURE INC., a Virginia
corporation; BROADSPECTRUM
18 AMERICAS, INC. f/k/a TRANSFIELD
SERVICES AMERICAS, INC., a Delaware
19 corporation; TIMEC SPECIALTY SERVICES,
INC. f/k/a BROADSPECTRUM SPECIALTY
20 SERVICES, INC., a Delaware corporation;
BROADSPECTRUM DOWNSTREAM
21 SERVICES, INC., a Delaware corporation, and
DOES 1 through 10, inclusive,

22 Defendants.
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Case No.: CGC-18-567744

**FIRST AMENDED COLLECTIVE AND
CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*);
- (2) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (3) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (4) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (5) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Rest Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California

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- Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Shu Wu, individually and on behalf of all other members of the public similarly
2 situated, and as an aggrieved employee and on behalf of all other aggrieved employees, alleges as
3 follows:

4 **JURISDICTION AND VENUE**

5 1. This collective and class action is brought pursuant to California Code of Civil
6 Procedure section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other current
8 and former employees who worked for Defendants in California as non-exempt, hourly paid employees
9 and who received at least one wage statement and against whom one or more violations of any provision
10 in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in
11 the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this
12 complaint. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal
13 jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has
14 jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes
15 under which this action is brought do not specify any other basis for jurisdiction.

16 2. This Court has jurisdiction over Defendants because Defendants are either citizens of
17 California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
18 the California market so as to render the exercise of jurisdiction over them by the California courts
19 consistent with traditional notions of fair play and substantial justice.

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

23 **THE PARTIES**

24 4. Plaintiff Shu Wu is a resident of Oakland in Alameda County, California. Defendants
25 employed Plaintiff as a non-exempt, hourly paid Tow Truck Operator from approximately July 2014 to
26 October 2017. During his employment, Plaintiff worked for Defendants in San Francisco, California.
27 Plaintiff worked approximately nine (9) or more hours per day, five (5) days per week, and forty (40)
28 hours or more per week. His job duties included, without limitation, remotely monitoring streets,

1 patrolling for illegally parked cars, and towing illegally parked cars.

2 5. Defendant FERROVIAL SERVICES INFRASTRUCTURE INC. f/k/a
3 BROADSPECTRUM INFRASTRUCTURE INC. f/k/a TRANSFIELD SERVICES
4 INFRASTRUCTURE INC. was and is, upon information and belief, a Virginia corporation doing
5 business in California, and at all times hereinafter mentioned, an employer whose employees are
6 engaged throughout this county, the State of California, or the various states of the United States of
7 America.

8 6. Defendant BROADSPECTRUM AMERICAS, INC. f/k/a TRANSFIELD SERVICES
9 AMERICAS, INC. was and is, upon information and belief, a Delaware corporation doing business in
10 California, and at all times hereinafter mentioned, an employer whose employees are engaged
11 throughout this county, the State of California, or the various states of the United States of America.

12 7. Defendant TIMEC SPECIALTY SERVICES, INC. f/k/a BROADSPECTRUM
13 SPECIALTY SERVICES, INC. was and is, upon information and belief, a Delaware corporation doing
14 business in California, and at all times hereinafter mentioned, an employer whose employees are
15 engaged throughout this county, the State of California, or the various states of the United States of
16 America.

17 8. Defendant BROADSPECTRUM DOWNSTREAM SERVICES, INC. was and is,
18 upon information and belief, a Delaware corporation doing business in California, and at all times
19 hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of
20 California, or the various states of the United States of America.

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

24 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the
25 partners, agents, owners, or managers of FERROVIAL SERVICES INFRASTRUCTURE INC. f/k/a
26 BROADSPECTRUM INFRASTRUCTURE INC. f/k/a TRANSFIELD SERVICES
27 INFRASTRUCTURE INC.; BROADSPECTRUM AMERICAS, INC. f/k/a TRANSFIELD
28 SERVICES AMERICAS, INC.; TIMEC SPECIALTY SERVICES, INC. f/k/a BROADSPECTRUM

1 SPECIALTY SERVICES, INC.; and/or BROADSPECTRUM DOWNSTREAM SERVICES, INC., at
2 all relevant times.

3 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
4 omissions alleged herein was performed by, or is attributable to, FERROVIAL SERVICES
5 INFRASTRUCTURE INC. f/k/a BROADSPECTRUM INFRASTRUCTURE INC. f/k/a
6 TRANSFIELD SERVICES INFRASTRUCTURE INC.; BROADSPECTRUM AMERICAS, INC.
7 f/k/a TRANSFIELD SERVICES AMERICAS, INC.; TIMEC SPECIALTY SERVICES, INC. f/k/a
8 BROADSPECTRUM SPECIALTY SERVICES, INC.; BROADSPECTRUM DOWNSTREAM
9 SERVICES, INC., and/or DOES 1 through 10 (collectively “Defendants” or “BROADSPECTRUM”),
10 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
11 the other co-Defendants and was acting within the course and scope of such agency, employment, joint
12 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all
13 Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

21 14. Under California law, Defendants are jointly and severally liable as employers for the
22 violations alleged herein because they have each exercised sufficient control over the wages, hours,
23 working conditions, and employment status of Plaintiff and class members. Each Defendant had the
24 power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or
25 conditions of employment, determined their rate of pay, and maintained their employment records.
26 Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and
27 class members so as to create a common-law employment relationship. As joint employers of Plaintiff
28 and class members, Defendants are jointly and severally liable for the civil penalties and all other relief

1 available to Plaintiff and class members under the law.

2 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class members
4 because Defendants have:

- 5 (a) jointly exercised meaningful control over the work performed by Plaintiff and
6 class members;
- 7 (b) jointly exercised meaningful control over Plaintiff's and class members' wages,
8 hours, and working conditions, including the quantity, quality standards, speed,
9 scheduling, and operative details of the tasks performed by Plaintiff and class
10 members;
- 11 (c) jointly required that Plaintiff and class members perform work which is an
12 integral part of Defendants' businesses; and
- 13 (d) jointly exercised control over Plaintiff and class members as a matter of
14 economic reality in that Plaintiff and class members were dependent on
15 Defendants, who shared the power to set the wages of Plaintiff and class
16 members and determine their working conditions, and who jointly reaped the
17 benefits from the underpayment of their wages and noncompliance with other
18 statutory provisions governing their employment.

19 16. Plaintiff is informed and believes, and further alleges, that at all relevant times there has
20 existed a unity of interest and ownership between Defendants such that any individuality and
21 separateness between the entities has ceased.

22 17. FERROVIAL SERVICES INFRASTRUCTURE INC. f/k/a BROADSPECTRUM
23 INFRASTRUCTURE INC. f/k/a TRANSFIELD SERVICES INFRASTRUCTURE INC.;
24 BROADSPECTRUM AMERICAS, INC. f/k/a TRANSFIELD SERVICES AMERICAS, INC.;
25 TIMEC SPECIALTY SERVICES, INC. f/k/a BROADSPECTRUM SPECIALTY SERVICES, INC.;
26 BROADSPECTRUM DOWNSTREAM SERVICES, INC.; and DOES 1 through 10 are therefore alter
27 egos of each other.

28 18. Adherence to the fiction of the separate existence of Defendants would permit an abuse

1 of the corporate privilege, and would promote injustice by protecting Defendants from liability for the
2 wrongful acts committed by it under the name FERROVIAL, BROADSPECTRUM, TRANSFIELD,
3 or TIMEC.

4 19. Plaintiff further alleges, upon information and belief, that Defendants FERROVIAL
5 SERVICES INFRASTRUCTURE INC. f/k/a BROADSPECTRUM INFRASTRUCTURE INC. f/k/a
6 TRANSFIELD SERVICES INFRASTRUCTURE INC.; BROADSPECTRUM AMERICAS, INC.
7 f/k/a TRANSFIELD SERVICES AMERICAS, INC.; TIMEC SPECIALTY SERVICES, INC. f/k/a
8 BROADSPECTRUM SPECIALTY SERVICES, INC.; and BROADSPECTRUM DOWNSTREAM
9 SERVICES, INC., are alter egos of each other for the following reasons:

- 10 (a) The Broadspectrum companies, including BROADSPECTRUM
11 INFRASTRUCTURE INC. and BROADSPECTRUM AMERICAS, INC.
12 (which were formerly known as Transfield Services Ltd (TSE), including
13 TRANSFIELD SERVICES INFRASTRUCTURE INC. and TRANSFIELD
14 SERVICES AMERICAS, INC.), are business entities headquartered
15 in Australia;¹
- 16 (b) The Spanish company Ferrovial, including FERROVIAL SERVICES
17 INFRASTRUCTURE INC., acquired the Broadspectrum companies in June
18 2016;²
- 19 (c) The entity “BROADSPECTRUM DOWNSTREAM SERVICES, INC.” is
20 listed on the California Secretary of State’s website at the address “10814
21 JOLLYVILLE ROAD, SUITE 160, AUSTIN TX 78759.” This is the same
22 address listed on Plaintiff’s W-2 form for the entity “TRANSFIELD
23 SERVICES INFRASTRUCTURE INC.”;

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25 ¹ “Broadspectrum – Wikipedia,” available at
<https://en.wikipedia.org/wiki/Broadspectrum>, last accessed June 26, 2018.

26 ² “Ferrovial completes acquisition of Broadspectrum,” available at
<http://www.broadspectrum.com/news-2016/ferrovial-completes-acquisition-of-broadspectrum>
27 (“Broadspectrum is now 100 per cent owned by Ferrovial Services Australia Pty Limited. . . .
28 Broadspectrum was removed from the official list of the Australian Securities Exchange
(ASX) at the close of trading on Tuesday, 28 June 2016, just over 15 years since it was
originally listed (as Transfield Services).”), last accessed June 26, 2018.

1 (d) On information and belief, FERROVIAL SERVICES INFRASTRUCTURE
2 INC. f/k/a BROADSPECTRUM INFRASTRUCTURE INC. f/k/a
3 TRANSFIELD SERVICES INFRASTRUCTURE INC.;
4 BROADSPECTRUM AMERICAS, INC. f/k/a TRANSFIELD SERVICES
5 AMERICAS, INC.; TIMEC SPECIALTY SERVICES, INC. f/k/a
6 BROADSPECTRUM SPECIALTY SERVICES, INC.; and
7 BROADSPECTRUM DOWNSTREAM SERVICES, INC. utilize the same
8 standardized employment forms and issue the same employment policies; and

9 (e) On information and belief, FERROVIAL SERVICES INFRASTRUCTURE
10 INC. f/k/a BROADSPECTRUM INFRASTRUCTURE INC. f/k/a
11 TRANSFIELD SERVICES INFRASTRUCTURE INC.; TIMEC
12 SPECIALTY SERVICES, INC. f/k/a BROADSPECTRUM SPECIALTY
13 SERVICES, INC.; and BROADSPECTRUM DOWNSTREAM SERVICES,
14 INC. share the same agent for service of process, "CORPORATION SERVICE
15 COMPANY."

16 GENERAL ALLEGATIONS

17 20. Defendants are Virginia and Delaware corporations which provide infrastructure
18 services in a broad range of areas, including property and facilities management, defense, transportation,
19 utilities, and mining and chemical processing. Defendants operate in 24 countries and maintain their
20 corporate headquarters in North Sydney, Australia.

21 21. Upon information and belief, Defendants maintain a single, centralized Human
22 Resources (HR) department, at their corporate headquarters in Austin, Texas, which is responsible for
23 conducting Defendants' recruiting and hiring of new employees, as well as communicating and
24 implementing Defendants' company-wide policies to employees throughout California.

25 22. In particular, Plaintiff and class members, on information and belief, received the same
26 standardized documents and/or written policies. Upon information and belief, the usage of standardized
27 documents and/or written policies, including new hire documents, indicate that Defendants dictated
28 policies at the corporate level and implemented them company-wide, regardless of their employees'

1 assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and
2 procedures in several documents provided at an employee's time of hire. For example, at the time
3 Plaintiff was hired, he received documents including, but not limited to, the Offer Letter and Employee
4 Handbook.

5 23. Upon information and belief, Defendants maintain a centralized Payroll department at
6 their corporate headquarters in Austin, Texas, which processes payroll for all non-exempt, hourly paid
7 employees working for Defendants at their various locations and jobsites in California, including
8 Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted
9 wage statements to all non-exempt, hourly paid employees in California, irrespective of their work
10 locations. Upon information and belief, Defendants process payroll for departing employees in the same
11 manner throughout the State of California, regardless of the manner in which each employee's
12 employment ends.

13 24. Defendants continue to employ non-exempt or hourly paid employees in California.

14 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
15 Defendants were advised by skilled lawyers and other professionals, employees and advisors
16 knowledgeable about federal and California labor and wage law, employment and personnel practices,
17 and about the requirements of federal and California law.

18 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members
19 were not paid for all hours worked because all hours worked were not recorded.

20 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
21 have known that Plaintiff and class members were entitled to receive certain wages for overtime
22 compensation and that they were not receiving certain wages for overtime compensation.

23 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that Plaintiff and class members were entitled to receive at least minimum wages for
25 compensation and that they were not receiving at least minimum wages for work that was required to be
26 done off-the-clock. In violation of the Fair Labor Standards Act and California Labor Code, Plaintiff and
27 class members were not paid at least minimum wages for work done off-the-clock.

28 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should

1 have known that Plaintiff and class members were entitled to meal periods in accordance with the Labor
2 Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not
3 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
4 were not provided with all meal periods or payment of one (1) additional hour of pay at their regular
5 rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
15 have known that Plaintiff and class members were entitled to receive complete and accurate wage
16 statements in accordance with California law. In violation of the California Labor Code, Plaintiff and
17 class members were not provided complete and accurate wage statements.

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

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
23 have known that Plaintiff and class members were entitled to timely payment of all wages earned upon
24 termination of employment. In violation of the California Labor Code, Plaintiff and class members did
25 not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages,
26 and/or meal and rest period premiums, within permissible time periods.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
28 have known that Plaintiff and class members were entitled to timely payment of wages during their

1 employment. In violation of the California Labor Code, Plaintiff and class members did not receive
2 payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or meal and
3 rest period premiums, within permissible time periods.

4 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
5 that Defendants knew or should have known that they had a duty to cover the costs and expenses
6 Plaintiff and class members incurred obtaining mandatory physical examinations and/or drug tests, but
7 willfully, knowingly, and intentionally failed to do so.

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
9 have known that Plaintiff and class members were entitled to receive full reimbursement for all business-
10 related expenses and costs they incurred during the course and scope of their employment and that they
11 did not receive full reimbursement of applicable business-related expenses and costs incurred.

12 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
13 Defendants knew or should have known that they had a duty to provide Plaintiff and class members with
14 written notice of the material terms of their employment with Defendants as required by the California
15 Wage Theft Prevention Act, but willfully, knowingly, and intentionally failed to do so.

16 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
17 Defendants knew or should have known that they had a duty to compensate Plaintiff and class members
18 for all hours worked, and that Defendants had the financial ability to pay such compensation, but
19 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class
20 members that they were properly denied wages, all in order to increase Defendants' profits.

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 39. At all times herein set forth, PAGA provides that any provision of law under the Labor
23 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by
24 the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an
25 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and
26 other current or former employees pursuant to procedures outlined in California Labor Code section
27 2699.3.

28 40. Plaintiff and other current and former employees of Defendants are "aggrieved

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 269.

42. On September 25, 2020, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned Plaintiff PAGA Case Number LWDA-CM-807727-20. A true and correct copy of Plaintiff’s written notice to the LWDA and Defendants is attached hereto as “Exhibit

1. ”

43. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

44. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

48. Plaintiff brings the First Cause of Action under the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*) (“FLSA”) as a California “opt-in” collective action pursuant to 29 U.S.C. § 216(b), on behalf of:

1 All persons who worked for Defendants as non-exempt, hourly paid
2 employees in California, within three (3) years prior to the filing of this
3 complaint until the date of trial ("Collective Action Class").

4 49. All other claims alleged herein arise under California law for which Plaintiff seeks relief
5 authorized by California law.

6 50. Plaintiff's proposed class consists of and is defined as follows:

7 All persons who worked for Defendants as non-exempt, hourly paid
8 employees in California, within four years prior to the filing of this
9 complaint until the date of trial ("Class").

10 51. Plaintiff's proposed subclass consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly paid
12 employees in California and who received at least one wage statement
13 within one year prior to the filing of this complaint until the date of trial
14 ("Subclass").

15 52. Members of the Class, Subclass, and Collective Action Class are referred to herein as
16 "class members."

17 53. Plaintiff reserves the right to redefine the Classes and to add subclasses as appropriate
18 based on further investigation, discovery, and specific theories of liability.

19 54. There are common questions of law and fact as to class members that predominate over
20 questions affecting only individual members, including, but not limited to:

- 21 (a) Whether Defendants required Plaintiff, collective action members, and class
22 members to work over eight (8) hours per day, over twelve (12) hours per day,
23 or over forty (40) hours per week and failed to pay all legally required overtime
24 compensation to Plaintiff, collective action members, and class members;
- 25 (b) Whether Defendants failed to pay Plaintiff, collective action members, and class
26 members at least minimum wages for all hours worked;
- 27 (c) Whether Defendants failed to provide Plaintiff and class members with meal
28 periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class members
to take rest periods;

- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (g) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums to Plaintiff and class members during their employment;
- (h) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;
- (i) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (j) Whether Defendants failed to provide written notice of information material to Plaintiff and class members' employment with Defendants;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and,
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

55. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the

1 interests of each class member with whom he has a well-defined community of
2 interest, and Plaintiff's claims (or defenses, if any) are typical of all class
3 members as demonstrated herein.

4 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
5 interests of each class member with whom he has a well-defined community of
6 interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
7 that he has an obligation to make known to the Court any relationship, conflicts
8 or differences with any class member. Plaintiff's attorneys, the proposed class
9 counsel, are versed in the rules governing class action discovery, certification,
10 and settlement. Plaintiff has incurred, and throughout the duration of this action,
11 will continue to incur costs and attorneys' fees that have been, are, and will be
12 necessarily expended for the prosecution of this action for the substantial benefit
13 of each class member.

14 (d) Superiority: The nature of this action makes the use of class action adjudication
15 superior to other methods. A class action will achieve economies of time, effort,
16 and expense as compared with separate lawsuits, and will avoid inconsistent
17 outcomes because the same issues can be adjudicated in the same manner and at
18 the same time for the entire class.

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

27 **FIRST CAUSE OF ACTION**

28 **Violation of Fair Labor Standards Act—29 U.S.C. §§ 201 *et seq.***

(On Behalf of Plaintiff and Collective Action Class Members Against Defendants)

56. Plaintiff incorporates by reference and re-alleges as if fully stated herein each allegation set forth above.

57. Defendants are employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA.

58. Defendants employed and/or continue to employ Plaintiff and Collective Action Class members within the meaning of the FLSA.

59. Plaintiff has expressly consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff's Notice of Filing of Consent to Join Form.

60. Pursuant to the FLSA, Defendants were required to compensate Plaintiff and Collective Action Class members an amount at least equal to the applicable minimum wage for all hours worked, and for overtime at a rate of one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek 29 U.S.C. §§ 206(a), 207(a).

61. During the relevant time period, Plaintiff and Collective Action Class members worked in excess of 40 hours in a workweek.

62. As alleged in greater detail below, at all relevant times, Defendants required Plaintiff and Collective Action Class members to regularly work off-the-clock during unpaid meal periods, after scheduled shifts, and for mandatory drug tests and/or physical examinations. As a result, Defendants failed to pay Plaintiff and Collective Action Class members minimum wages for all hours worked and failed to pay overtime compensation for all hours worked in excess of 40 hours in a workweek.

63. The FLSA also imposes a record-keeping requirement on employers, including the obligation to keep accurate records of all hours worked by employees. Defendants have knowingly and willfully failed and continue to willfully fail to record, report, and/or preserve accurate records of all hours worked by Plaintiff and Collective Action Class members. By failing to record, report, and/or preserve records of all hours worked by Plaintiff and Collective Action Class members, Defendants have violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*

64. Based on the foregoing and allegations herein, Defendants have violated 29 U.S.C. §§

201 *et seq.*, including 29 U.S.C. §§ 206(a) and 207(a).

65. Defendants' conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

66. Plaintiff, on behalf of himself and Collective Action Class members, seeks to recover their respective unpaid wages, overtime compensation, liquidated damages, interest, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), and any other relief the Court deems just and proper.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against All Defendants)

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

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

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

70. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

71. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay, and were required to pay Plaintiff and other class members at a rate of two (2) times their regular rate of pay for hours worked in excess of eight

1 (8) hours on the seventh (7th) consecutive day of a work in a workweek.

2 72. At all relevant times, Defendants willfully failed to pay all overtime wages owed to
3 Plaintiff and class members. At all relevant times, Plaintiff and class members were not paid overtime
4 premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
5 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not
6 recorded.

7 73. First, during the relevant time period, Defendants had company-wide policies and/or
8 practices of failing to pay Plaintiff and class members for all hours worked. Among them, Defendants
9 required Plaintiff and class members to wait until the next shift of coverage arrived to relieve them.
10 However, Plaintiff and class members were not compensated for the time they remained on duty
11 following the end of their scheduled shifts, which resulted in work performed off-the-clock. For
12 example, the shift following Plaintiff's was scheduled to start at 4:30 a.m., but if the next shift's
13 employees did not show up until 5:00 a.m., he was required to stay on duty for an additional half hour
14 until he could be relieved by the next shift. Because there was no time clock on-site, everyone on a
15 particular shift denoted their hours on a shared log, which would be submitted at the end of the scheduled
16 shift. When Plaintiff was required to stay past the end of his scheduled shift, he was not able to alter the
17 log because it had already been submitted to Defendants, resulting in work for which he was not paid.
18 Additionally, on information and belief, Plaintiff and class members were subject to their supervisors
19 altering their clock-in and clock-out times in order to limit the amount of overtime Plaintiff and class
20 members could accrue.

21 74. Further, Defendants have a company-wide policies of understaffing their job sites,
22 resulting in a lack of meal period coverage. Due to the lack of coverage caused by understaffing,
23 Defendants forced Plaintiff and class members to work through their meal periods by requiring them to
24 remain on or near the premises for their meal periods, including sitting in the office and watching
25 security monitors during their meal periods. Because Plaintiff and class members were restricted from
26 leaving the premises during meal periods, they were denied the ability to use their meal periods freely for
27 their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
28 during meal periods. Additionally, Defendants required Plaintiff and class members to respond to

1 company-issued radio calls at all times, including during their meal periods, causing Plaintiff and class
2 members to have their meal periods interrupted by work.

3 75. As a result of Defendants' company-wide policies and/or practices, including but not
4 necessarily limited to understaffing and a lack of meal period coverage, Plaintiff and class members were
5 not permitted and authorized to take uninterrupted 30-minute meal periods during shifts in which they
6 were entitled to receive meal periods. Thus, Plaintiff and class members missed meal periods and had
7 their meal periods interrupted, but were not compensated for this time.

8 76. Defendants knew or should have known that, as a result of their policies and practices,
9 Plaintiff and class members were performing some of their assigned duties during unpaid meal periods
10 and after their shifts, and were suffered or permitted to perform work for which they were not paid.
11 Defendants also knew, or should have known, that they did not compensate Plaintiff and class members
12 for this off-the-clock work and unrecorded overtime hours.

13 77. Because Plaintiff and class members worked shifts in excess of eight (8) hours a day or
14 more and forty (40) hours a week or more, much of this off-the-clock work performed during unpaid
15 meal periods qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
16 overtime wages for all of the overtime hours they actually worked.

17 78. Defendants' failure to pay Plaintiff and class members the balance of overtime
18 compensation, as required by California law, violates the provisions of California Labor Code sections
19 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled
20 to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

21 **THIRD CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum** 23 **Wages**

24 **(Against all Defendants)**

25 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
26 allegation set forth above.

27 80. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
28 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid

1 to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable
2 work time is defined by the applicable wage order as “the time during which an employee is subject to
3 the control of an employer, and includes all the time the employee is suffered or permitted to work,
4 whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11090(2)(H) (defining “Hours Worked”).

5 81. As set forth above, Defendants have, and continue to have, company-wide policies
6 and/or practices of failing to pay Plaintiff and class members for all hours worked. Additionally,
7 Defendants have, and continue to have, company-wide policies and/or practices of understaffing their
8 job sites, which impeded Plaintiff and class members from taking full, uninterrupted meal periods to
9 which they were entitled and resulted in them working off-the-clock. In addition, as described above,
10 Defendants systematically failed to pay Plaintiff and class members for actual hours worked because
11 these hours were not always correctly recorded or, on information and belief, Defendants adjusted
12 employee time records.

13 82. During the relevant time period, Defendants also maintained and implemented a
14 company-wide policy of requiring all employees to travel to a medical clinic on their own time and using
15 their own personal vehicles to undergo a mandatory drug test and/or physical examination. At all times,
16 Defendants were in control of scheduling the time period for the testing and/or physical examinations,
17 selecting the provider or facility where the testing and/or physical examinations were to take place, and
18 determining the scope of the testing and/or physical examinations. For example, Defendants gave
19 Plaintiff strict instructions to obtain drug testing, and Plaintiff underwent the testing for the sole benefit of
20 Defendants. Plaintiff followed Defendants’ instructions and spent several hours traveling to and from
21 the medical facility designated by Defendants, waiting at the medical facility, and undergoing the
22 requisite testing. However, Defendants did not compensate Plaintiff and class members for the time they
23 spent traveling to and from the medical facilities or for the time they spent undergoing drug testing
24 and/or physical examinations.

25 83. Defendants did not pay at least minimum wages for all hours worked by Plaintiff and
26 class members. To the extent that these off-the-clock hours did not qualify for overtime premium
27 payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in
28 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly,

1 Defendants failed to pay at least minimum wages to Plaintiff and class members for all of the hours they
2 worked.

3 84. Defendants' failure to pay Plaintiff and class members minimum wages violates
4 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor
5 Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an
6 amount equal to the wages unlawfully unpaid and interest thereon.

7 **FOURTH CAUSE OF ACTION**

8 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations** 9 **(Against all Defendants)**

10 85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
11 allegation set forth above.

12 86. At all relevant times herein set forth, California Labor Code section 512(a) provides that
13 an employer may not require, cause, or permit an employee to work for a period of more than five (5)
14 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,
15 except that if the total work period per day of the employee is not more than six (6) hours, the meal
16 period may be waived by mutual consent of both the employer and the employee. Under California law,
17 first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.
18 4th 1004, 1041-1042 (Cal. 2012).

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

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

28 89. At all relevant times, as stated above, Defendants had, and continue to have, a company-

1 wide policies and/or practices of understaffing job sites, which resulted in a lack of sufficient meal break
2 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
3 which they were entitled. For example, there were usually only two or three people on duty during a
4 shift. During this time, Plaintiff and class members received late, shortened, and/or interrupted meal
5 breaks. Plaintiff and class members were required to work throughout their shifts without taking
6 compliant meal periods to adhere to Defendants' policies and expectations. Further, Defendants have,
7 on a company-wide basis, failed to adhere to a schedule of meal periods even though they are aware and
8 know that employees are entitled to such meal periods, resulting in Plaintiff and class members taking
9 their meal periods late. For example, Plaintiff would only receive his meal periods 5.5 or 6.5 hours after
10 the start of his shift.

11 90. Additionally, Defendants discouraged and impeded Plaintiff and class members from
12 taking compliant periods by failing to provide them with an accurate clock-in and clock-out mechanism
13 at job sites. Instead, Plaintiff and class members were expected to note their clock-in and clock-out times
14 in a logbook at the end of their shifts, which, on information and belief, was subject to falsification, as
15 Defendants' management could adjust time records to reflect compliant meal periods if Plaintiff and
16 class members failed to denote them. Plaintiff and class members missed their meal periods altogether,
17 had their meal periods interrupted to return to work, or waited extended periods of time before taking
18 meal periods, but these violations were not reflected in Plaintiff's and class members' time records.

19 91. At all times herein mentioned, Defendants knew or should have known that, as a result
20 of their policies, including understaffing, failure to adhere to a schedule of meal periods, and requirement
21 of answering radio calls and remaining on or near the work premises, Plaintiff and class members have
22 been required to perform some of their assigned duties during meal periods. As a result, Plaintiff and
23 class members had to work through part or all of their meal periods. For example, Plaintiff sometimes
24 had to eat his meals while staying in the office or watching monitors, per Defendants' instructions.

25 92. Defendants further knew or should have known that Defendants did not pay Plaintiff
26 and class members meal period premium wages when meal periods were interrupted or missed because,
27 on information and belief, Defendants adjusted employee time records to reflect compliant meal periods,
28 even if none were taken. Plaintiff and class members did not sign valid meal period waivers on days that

1 they were entitled to meal periods and were not relieved of all duties.

2 93. Moreover, upon information and belief, Defendants engaged in a systematic, company-
3 wide practice and/or policy of not paying meal period premiums for Plaintiff and class members,
4 regardless of whether they were able to take a compliant meal period, in violation of the applicable IWC
5 Wage Order and Labor Code sections 226.7 and 512(a). As a result, Defendants failed to provide
6 Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7,
7 512, and 516 and failed to pay the full meal period premiums due.

8 94. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
9 Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover
10 from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each
11 work day that the meal period was not provided.

12 **FIFTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

14 **(Against all Defendants)**

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

17 96. At all relevant times herein set forth, the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members' employment
19 by Defendants.

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

25 98. At all relevant times, California Labor Code section 226.7 provides that no employer
26 shall require an employee to work during any rest period mandated by an applicable order of the
27 California IWC. To comply with its obligation to authorize and permit rest periods under California
28 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any

1 control over how employees spend their break time, and relieve their employees of all duties—including
2 the obligation that an employee remain on call. A rest period, in short, must be a period of rest.”
3 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable
4 IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled
5 to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
6 that a required rest period was not authorized and permitted.

7 99. During the relevant time period, Defendants regularly failed to authorize and permit
8 Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or
9 major fraction thereof. Defendants’ company-wide policy and practice of requiring Plaintiff and class
10 members to carry and respond to radio calls prevented them from being relieved of all duty to take
11 compliant rest periods. Furthermore, Defendants had a uniform policy of failing to schedule or provide
12 rest periods. As a result, Defendants failed to provide a mechanism for Plaintiff and class members to
13 take compliant rest periods.

14 100. Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours,
15 and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which
16 they were entitled. Throughout his employment, Plaintiff was not permitted to take full and complete ten
17 (10) minute rest periods, and instead would experience interrupted rest periods due to calls on his radio
18 which he was required to answer.

19 101. Defendants have also engaged in a systematic, company-wide practice and/or policy of
20 not paying rest period premiums owed when rest periods are not authorized and permitted. As a result,
21 Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premium
22 wages due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

23 102. Defendants’ conduct violates the applicable IWC Wage Order and California Labor
24 Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from
25 Defendants one (1) additional hour of pay at the employee’s regular rate of compensation for each work
26 day that a compliant rest period was not authorized and permitted.

1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
6 allegation set forth above.

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

11 105. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff
12 and class members with uniform, incomplete, and inaccurate wage statements. For example, Defendants
13 issued uniform wage statements to Plaintiff and class members that failed to correctly list: the identity of
14 Plaintiff's and class members' employer; gross wages earned; total hours worked; net wages earned; all
15 applicable hourly rates in effect during the pay period, including overtime rates of pay, the corresponding
16 number of hours worked at each hourly rate.; and payment for premium wages for non-complaint meal
17 and rest breaks. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8),
18 26(a)(9), and 226.3.

19 106. Defendants failed to list all applicable hourly rates in effect during the pay period,
20 namely, rates of pay for overtime, in violation of section 226(a)(9). For example, on some of Plaintiff's
21 paystubs, no overtime or holiday pay rate is listed. Additionally, because Defendants did not record the
22 time Plaintiff and Subclass members spent working off the clock and deducted time worked from
23 Plaintiff's and Subclass members' wage statements and employment records for meal periods they did
24 not actually receive, Defendants unlawfully deducted wages earned and meal period premiums that
25 should have been paid. Thus, Defendants did not furnish wage statements to Plaintiff and Subclass
26 members which contained the correct amount of gross wages earned (Labor Code § 226(a)(1)), accurate
27 totals of the hours worked (Labor Code § 226(a)(2)), correct amount of net wages earned (Labor Code §
28 226(a)(5)), or accurate number of hours worked at each hourly rate (Labor Code § 226(a)(9)).

1 107. Separate from these violations, Defendants issued uniform wage statements to Plaintiff
2 and Subclass members that failed to list the correct name and address of the legal entity of the actual
3 employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide
4 California employees with transparency as to the true identity of their employer, to allow the employee
5 to contact their employer during employment in the future for various reasons, including, filing an
6 administrative claim, judicial claim, or other action to seek relief against their employer, to obtain
7 unemployment benefits, etc.

8 108. During the relevant time period, Defendants systematically, and on a company-wide
9 basis, issued wage statements to Plaintiff and Subclass members that list the employing entity's name as
10 "Broadspectrum Infrastructure" with the address "1330 Post Oak Blvd Suite 1250, Houston, TX 77056,"
11 which is not the correct name or address of the legal entity that employs Plaintiff and Subclass members.
12 According to the California Secretary of State's website, there is no such entity named "Broadspectrum
13 Infrastructure" registered to do business in California. However, a similarly-named entity named
14 "BROADSPECTRUM DOWNSTREAM SERVICES, INC." is listed on the California Secretary of
15 State's website at the address "10814 JOLLYVILLE ROAD, SUITE 160, AUSTIN TX 78759."
16 Further adding to the confusion, Plaintiff also received a W-2 statement that names his employer as
17 "TRANSFIELD SERVICES INFRASTRUCTURE INC." which does not appear on his paystub,
18 further muddling Plaintiff's efforts to identify his correct employer and the address at which they can be
19 contacted.

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

26 110. California Labor Code section 1198 provides that the maximum hours of work and the
27 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
28 applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees

1 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
3 records showing when the employee begins and ends each work period and meal period. At all relevant
4 times, Defendants failed, on a company-wide basis, to keep records of work period and meal period start
5 and stop times for Plaintiff and Subclass members in violation of section 1198.

6 111. California Labor Code section 1174(d) provides that “[e]very person employing labor in
7 this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
8 ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at
9 which employees are employed, payroll records showing the hours worked daily by and the wages paid
10 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
11 employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor
12 Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
13 Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing
14 to record the off-the-clock hours that they worked.

15 112. Plaintiff and Subclass members are entitled to recover from Defendants the greater of
16 their actual damages caused by Defendants’ failure to comply with California Labor Code section
17 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

18 SEVENTH CAUSE OF ACTION

19 Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon Termination 20 (Against all Defendants)

21 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
22 allegation set forth above.

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

1 115. Defendants willfully failed to pay Plaintiff his final wages within the statutory time
2 limits. Specifically, Defendants terminated Plaintiff in person at Defendants' San Francisco office on or
3 around October 11, 2017, but failed to tender him his final paycheck immediately. Instead, Defendants
4 did not provide Plaintiff with a final paycheck until the next regularly scheduled payday approximately
5 two (2) weeks later when he received it in the mail.

6 116. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no
7 longer employed by Defendants the earned and unpaid wages set forth above, including but not limited
8 to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of
9 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

10 117. Defendants' failure to pay Plaintiff and those class members who are no longer
11 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two
12 (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and
13 class members are therefore entitled to recover from Defendants the statutory penalty wages for each day
14 they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California
15 Labor Code section 203.

16 EIGHTH CAUSE OF ACTION

17 Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment 18 (Against all Defendants)

19 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
20 allegation set forth above.

21 119. This cause of action is dependent upon, and wholly derivative of, the overtime wages,
22 minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and
23 those class members by Defendants during their employment.

24 120. At all times relevant herein set forth, Labor Code section 204 provides that all wages
25 earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive,
26 of any calendar month, other than those wages due upon termination of an employee, are due and
27 payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the
28 labor was performed.

121. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

123. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages within the time periods specified by California Labor Code section 204.

124. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

NINTH CAUSE OF ACTION

Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses

(Against all Defendants)

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

126. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 9-2001, provides that: "[w]hen the employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by

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

3 127. First, Defendants required Plaintiff and class members to utilize their own personal
4 cellular phones to carry out their job duties and communicate with other employees, but Defendants
5 failed to reimburse them for the costs of their cellular phone plans and/or data plans. Although they were
6 provided company-issued radios, there were occasions when the radios were not work or were out of
7 range. Since Plaintiff and class members did not work in an office setting, they had no access to phones
8 other than their own, and they frequently had to communicate with each other to coordinate work-related
9 responsibilities. Although Defendants required Plaintiff and class members to utilize their personal
10 cellular phones to carry out work-related responsibilities, Defendants failed to reimburse them for these
11 expenses.

12 128. Second, during the relevant time period, Defendants had a company-wide policy of
13 requiring Plaintiff and class members to travel in their own personal vehicles to obtain mandatory drug
14 testing and/or physical examinations, but did not reimburse them for their travel expenses, including
15 mileage. Defendants maintained and implemented a company-wide policy of requiring employees to
16 travel to a medical facility on their own time and using their own personal vehicles to undergo
17 mandatory drug testing and/or physical examinations. At all times, Defendants were in control of
18 scheduling the date and time for the testing and/or physical examinations, selecting the provider or
19 facility where the testing and/or physical examinations were to take place, and determining the scope of
20 the testing and/or physical examinations. Defendants gave Plaintiff and class members strict instructions
21 to obtain drug testing, and Plaintiff and class members underwent the testing and physical examinations
22 for the sole benefit of Defendants. For example, as described above, Plaintiff followed Defendants’
23 instructions and spent several hours traveling in his personal vehicle to Defendants’ designated medical
24 facility and undergoing Defendants’ drug testing, but was not reimbursed for his mileage to and from the
25 medical facility. Although Defendants required Plaintiff and class members to undergo drug testing
26 and/or physical examinations, Defendants failed to reimburse them for their travel expenses.

27 129. Defendants could have provided Plaintiff and class members with the actual tools
28 required for use on the job, including company phones, company vehicles, or company-provided

1 transportation to medical or physical examinations, or provided reimbursement for their cellular phone
2 and travel expenses. Instead, Defendants passed these costs on to Plaintiff and class members.
3 Defendants have, and continue to have, a company-wide policy and/or practice of not reimbursing
4 employees for expenses necessarily incurred.

5 130. Defendants' company-wide policy and/or practice of passing on their operating costs to
6 Plaintiff and class members by requiring that they use their personal cellular phones and vehicles for
7 business and failing to reimburse cellular phone and travel expenses, violates California Labor Code
8 section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and other
9 class members for these necessary business-related expenses and costs, as well as for other items that
10 were necessary for Plaintiff and class members to perform their job duties.

11 131. Plaintiff and class members are entitled to recover from Defendants their business-
12 related expenses incurred during the course and scope of their employment, plus interest.

13 **TENTH CAUSE OF ACTION**

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

15 **(Against all Defendants)**

16 132. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every
17 allegation set forth above.

18 133. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
19 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.
20 Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a),
21 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
22 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not
23 found in section 2699.5, including sections 516, 1182.12, and 2810.5.

24 134. Defendants' conduct, as alleged herein, violates numerous sections of the California
25 Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage
27 order for Defendants' failure to compensate Plaintiff and other aggrieved
28 employees with all required overtime pay, as alleged herein;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;
- (i) Violation of Labor Code section 222.5 for failing to pay the costs of mandatory drug tests and/or physical examinations, as set forth below;
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendants, as set forth below.

135. At all times herein set forth, California Labor Code section 222.5 requires employers to

1 pay for the costs an employee incurs for obtaining any required medical or physical examination taken.

2 136. During the relevant time period, Defendants implemented, on a company-wide basis, an
3 employer-imposed requirement that Plaintiff and other aggrieved employees undergo mandatory drug
4 tests and/or physical examinations, but required them to do so at their own expense. As stated,
5 Defendants had a company-wide policy requiring that all employees, including Plaintiff and other
6 aggrieved employees, travel to a specified medical facility using their own personal vehicles to undergo
7 drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the
8 date and time for the examination and/or testing, selecting the provider/facility where the examination
9 and/or testing was to take place, and determining the scope of the examination and/or testing.

10 137. During the relevant time period, Plaintiff was instructed by Defendants to travel to
11 Defendants' designated medical facility, and obtain a drug test. Plaintiff followed Defendants'
12 instructions, traveled to the facility Defendants selected, and underwent the testing. Plaintiff spent
13 several hours driving roundtrip to and from a medical facility selected by Defendants using his own
14 vehicle, waiting at the medical facility, and undergoing the requisite testing.

15 138. However, Defendants did not compensate Plaintiff and other aggrieved employees for
16 the time they spent traveling to and from the medical facilities; for the time they spent undergoing the
17 testing and/or examinations; or reimburse them for the travel expenses they incurred getting to and from
18 the medical facilities. Defendants' policy and/or practice of not paying for all costs Plaintiff and other
19 aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations violates
20 California Labor Code section 222.5. Plaintiff and other aggrieved employees are therefore entitled to
21 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

22 139. California's Wage Theft Prevention Act was enacted to ensure that employers provide
23 employees with basic information material to their employment relationship at the time of hiring, and to
24 ensure that employees are given written and timely notice of any changes to basic information material
25 to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act
26 provides that at the time of hiring, an employer must provide written notice to employees containing
27 basic and material payroll information, including, among other things, the rate(s) of pay and basis
28 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including

any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

140. Defendants failed to provide Plaintiff and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

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

142. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

143. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

144. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

145. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class

members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, as alleged herein;

(b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;

(c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;

(d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

(e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Failing to pay the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below;

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and

(i) Failing to provide written notice of information material to Plaintiff and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

146. At all relevant times herein, California Labor Code section 222.5 requires employers to

1 pay for the costs an employee incurs for obtaining any medical or physical examination taken.

2 147. At all times relevant herein, Defendants implemented, on a company-wide basis, an
3 employer-imposed requirement that Plaintiff and class members undergo a mandatory physical
4 examination and/or drug test, but required them to do so at their own expense. As stated, Defendants had
5 a company-wide policy requiring that all employees, including Plaintiff and class members, travel to a
6 specified medical facility using their own personal vehicles to undergo drug testing and/or physical
7 examinations. At all times, Defendants were in control of scheduling the date and time for the
8 examination and/or testing, selecting the provider/facility where the examination and/or testing was to
9 take place, and determining the scope of the examination and/or testing.

10 148. During the relevant time period, Plaintiff was instructed by Defendants to travel to
11 Defendants' designated medical facility, and obtain a drug test. Plaintiff followed Defendants'
12 instructions, traveled to the facility Defendants selected, and underwent the testing. Plaintiff spent
13 several hours driving roundtrip to and from a medical facility selected by Defendants using his own
14 vehicle, waiting at the medical facility, and undergoing the requisite testing.

15 149. However, Defendants did not compensate Plaintiff and class members for the time they
16 spent traveling to and from the medical facilities; for the time they spent undergoing the drug testing
17 and/or physical examinations; or reimburse them for the travel expenses they incurred getting to and
18 from the medical facilities. Defendants' policy and/or not paying for all costs Plaintiff and class
19 members incurred obtaining mandatory physical examinations and/or drug testing is in violation of
20 California Labor Code section 222.5.

21 150. At all relevant times herein, California's Wage Theft Prevention Act was enacted to
22 ensure that employers provide employees with basic information material to their employment
23 relationship at the time of hiring, and to ensure that employees are given written and timely notice of any
24 changes to basic information material to their employment. Codified at California Labor Code section
25 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide
26 written notice to employees containing basic and material payroll information, including, among other
27 things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
28 commission, or otherwise, including any rates for overtime, the regular payday designated by the

1 employer, and any allowances claims as part of the minimum wage, including meal or lodging
2 allowances. Labor Code § 2810.5(a)(1)(A)-(C).

3 151. At all relevant times, on information and belief, Defendants failed to provide written
4 notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section
5 2810.5(a)(1)(A)-(C) on a company-wide basis.

6 152. Defendants' failure to provide Plaintiff and class members with written notice of basic
7 information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

8 153. As a result of the violations of California law herein described, Defendants unlawfully
9 gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary
10 loss by Defendants' unlawful business acts and practices alleged herein.

11 154. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and
12 class members are entitled to restitution of the wages withheld and retained by Defendants during a
13 period that commences four years prior to the filing of this complaint; a permanent injunction requiring
14 Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys'
15 fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an
16 award of costs.

17 **TWELFTH CAUSE OF ACTION**

18 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

19 **Unfair Business Practices**

20 **(Against all Defendants)**

21 155. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
22 allegation set forth above.

23 156. Defendants are "persons" as defined by California Business & Professions Code
24 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

25 157. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
26 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has
27 lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important
28 rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

158. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (Id.)

159. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

160. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Classes and Subclass;
- 4 4. That counsel for Plaintiff be appointed as class counsel.

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

- 6 5. That the Court declare, adjudge, and decree that Defendants willfully violated the FLSA
- 7 by failing to pay all wages due to Plaintiff and Collective Action Class members;
- 8 6. An order that notice be sent to all Collective Action Class members employed by
- 9 Defendants within three (3) years of the filing of this complaint giving them notice of the opportunity to
- 10 join this case pursuant to 29 U.S.C. § 216(b);
- 11 7. Certification of the Collective Action Class as a collective action;
- 12 8. For an award of unpaid wages, including liquidated damages and interest due under the
- 13 FLSA to Plaintiff and Collective Action Class members;
- 14 9. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to 29 U.S.C.
- 15 § 216(b); and
- 16 10. For such other and further relief as the Court may deem equitable and appropriate.

17 **As to the Second Cause of Action**

- 18 11. That the Court declare, adjudge, and decree that Defendants violated California Labor
- 19 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
- 20 wages due to Plaintiff and class members;
- 21 12. For general unpaid wages at overtime wage rates and such general and special damages
- 22 as may be appropriate;
- 23 13. For pre-judgment interest on any unpaid overtime compensation commencing from the
- 24 date such amounts were due, or as otherwise provided by law;
- 25 14. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
- 26 Labor Code section 1194(a); and
- 27 15. For such other and further relief as the Court may deem equitable and appropriate.

28 **As to the Third Cause of Action**

16. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;

17. For general unpaid wages and such general and special damages as may be appropriate;

18. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

19. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

20. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Fourth Cause of Action

22. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

23. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

24. For all actual, consequential, and incidental losses and damages, according to proof;

25. For premiums pursuant to California Labor Code section 226.7(c);

26. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

27. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fifth Cause of Action

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

30. That the Court make an award to the Plaintiff and class members of one (1) hour of pay

at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For premiums pursuant to California Labor Code section 226.7(c);

33. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

34. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For injunctive relief pursuant to California Labor Code section 226(h);

39. For statutory penalties pursuant to California Labor Code section 226(e);

40. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
2 otherwise provided by law; and

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

4 **As to the Eighth Cause of Action**

5 48. That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages,
7 minimum wages, and/or meal and rest period premiums during their employment;

8 49. For all actual, consequential and incidental losses and damages, according to proof;

9 50. For statutory penalties according to proof pursuant to California Labor Code section
10 210;

11 51. For pre-judgment interest on any unpaid wages from the date such amounts were due, or
12 as otherwise provided by law;

13 52. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
14 otherwise provided by law; and

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

16 //

17 **As to the Ninth Cause of Action**

18 54. That the Court declare, adjudge and decree that Defendants violated California Labor
19 Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and
20 costs incurred by Plaintiff and class members;

21 55. For unpaid business-related expenses and such general and special damages as may be
22 appropriate;

23 56. For pre-judgment interest on any unpaid business-related expenses from the date such
24 amounts were due, or as otherwise provided by law;

25 57. For all actual, consequential, and incidental losses and damages, according to proof;

26 58. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as
27 otherwise provided by law; and

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

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1 earned wages during employment, failing to reimburse Plaintiff and class members for the costs of
2 mandatory drug testing, failing to reimburse Plaintiff and class members for business-related expenses,
3 and failing to provide written notice of information material to employment, constitutes an unlawful
4 business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

5 66. For restitution of unpaid wages to Plaintiff and all class members and prejudgment
6 interest from the day such amounts were due and payable;

7 67. For the appointment of a receiver to receive, manage and distribute any and all funds
8 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
9 of violations of California Business & Professions Code sections 17200 *et seq.*;

10 68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
11 Code of Civil Procedure section 1021.5; and

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

13 **As to the Twelfth Cause of Action**

14 70. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff
15 and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business
16 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

17 71. For restitution of the statutory benefits under section 226.7 unfairly withheld from
18 Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

19 72. For the appointment of a receiver to receive, manage and distribute any and all funds
20 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
21 of violations of California Business & Professions Code sections 17200 *et seq.*;

22 73. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
23 Code of Civil Procedure section 1021.5;

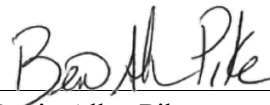
24 74. For pre-judgment and post-judgment interest as provided by law; and

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

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Dated: November 20, 2020

Respectfully submitted,
Capstone Law APC

By: 
Bevin Allen Pike
Orlando Villalba
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Attorneys for Plaintiff Shu Wu