

1 ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
2 ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
3 **KELLER GROVER LLP**
4 1965 Market Street
San Francisco, California 94103
5 Telephone: (415) 543-1305
6 Facsimile: (415) 543-7861

7 SCOT BERNSTEIN (SBN 94915)
swampadero@sbernsteinlaw.com
8 **LAW OFFICES OF SCOT D. BERNSTEIN,**
A PROFESSIONAL CORPORATION
9 101 Parkshore Drive, Suite 100
Folsom, California 95630
10 Telephone: (916) 447-0100
11 Facsimile: (916) 933-5533
12 Attorneys for Plaintiff
FRANK SICA
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA**
16

17 FRANK SICA on behalf of himself, all others)	Case No: RG20076869
similarly situated and all aggrieved employees,)	
18)	<u>CLASS AND REPRESENTATIVE ACTION</u>
Plaintiff,)	
19)	FIRST AMENDED CLASS AND
v.)	REPRESENTATIVE ACTION
20)	COMPLAINT FOR:
21 MADISON INDUSTRIAL SERVICES TEAM,) 1. UNFAIR BUSINESS PRACTICES;	
LIMITED PARTNERSHIP; and DOES 1) 2. VIOLATIONS OF THE LABOR CODE;	
22 through 50, inclusive,) 3. PENALTIES; and	
) 4. ATTORNEYS' FEES.	
23 Defendants.)	
) <u>DEMAND FOR JURY TRIAL</u>	
24)	
25) Complaint filed: September 30, 2020	
26)	
27)	
28)	

ENDORSED
FILED
ALAMEDA COUNTY

NOV 19 2020

CLERK OF THE SUPERIOR COURT

By _____ Deputy

ENDORSED
FILED
ALAMEDA COUNTY

NOV 19 2020

CLERK OF THE SUPERIOR COURT

By TANIA PIERCE Deputy

Plaintiff FRANK SICA, on behalf of himself, all others similarly situated and all aggrieved employees, complains against Defendants MADISON INDUSTRIAL SERVICES TEAM, LIMITED PARTNERSHIP, and Does 1 through 50 (all referred to collectively as “Defendants” or “MADISON”) as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor Code §§ 201-203, 204b, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198 and 1199. Plaintiff does not allege claims founded directly on rights created by a collective bargaining agreement or claims substantially dependent on analysis or interpretation of a collective bargaining agreement, and expressly disclaims any such claims. In particular, Plaintiff has complied with all California Labor Code § 2699.3 requirements for commencing a civil action under the California Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

2. This Court has personal jurisdiction over the parties because, at all relevant times, Plaintiff was a California resident who worked in California for Defendants and Defendants systematically and continuously have conducted business in the State of California.

3. Venue is proper in this Court because California Code of Civil Procedure §§ 395 and 395.5, and case law interpreting those sections, provide that if a business entity fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county in the state that plaintiff desires. On information and belief, as of the date this Complaint is filed, Defendant MADISON INDUSTRIAL SERVICES TEAM, LIMITED PARTNERSHIP, is a Texas limited partnership and has failed to designate a principal place of business in California with the office of the Secretary of State. According to the most recent statement of information filed with the California Secretary of State, Defendant MADISON INDUSTRIAL SERVICES TEAM, LIMITED PARTNERSHIP has no designated principal place of business within California and its principal place of business is located at 527 Logwood, San Antonio, Texas 78221.

II. PARTIES AND BACKGROUND

4. Plaintiff FRANK SICA is an adult who worked for Defendants as a non-exempt hourly employee. He worked for Defendants as a pipefitter on a project that took place in October 2019 at the Conoco Phillips refinery in Rodeo, California.

5. Defendant MADISON INDUSTRIAL SERVICES TEAM, LIMITED PARTNERSHIP is a Texas limited partnership doing business throughout California and is a “person” as defined by California Labor Code § 18 and California Business and Professions Code § 17201. In addition, it is an “employer” as that term is used in the California Labor Code and in the California Industrial Welfare Commission’s Orders regulating wages, hours, and working conditions.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that ground alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other losses as alleged are proximately caused by those occurrences.

7. Plaintiff brings this action on behalf of a proposed state-wide class of hourly non-exempt on-site employees who worked at MADISON locations in California to challenge Defendants’ (a) policy and practice of failing to pay any wages whatsoever, including the minimum wage, to employees for compensable pre-shift and post-shift time¹, including time spent traveling on and/or waiting for and/or operating company-provided transportation to, from and/or within the refineries and other facilities, donning and doffing safety gear and/or picking up brass, and/or otherwise working or under Defendant’s control; (b) policy and practice of violating California Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001 by failing to provide meal periods to

¹ References in this Complaint to “pre-shift” time and “post-shift” time refer to time worked and time spent under the Defendant’s control before and after the “shift” defined by Defendant. Thus, “shift” for these purposes refers to the working time for which Defendant actually paid its employees rather than to all of the time they were under Defendant’s control and/or were performing work for Defendant.

employees, including second meal periods to employees who worked more than 10 hours in a day; (c) policy and practice of violating California Labor Code § 226 by failing to provide accurate, itemized wage statements; and (d) policy and practice of violating California Labor Code §§ 201-203 by failing to pay former employees all wages due and owing at the time of discharge or voluntary quit.

8. Plaintiff brings this action on behalf of himself and a proposed class of all hourly non-exempt on-site workers employed by MADISON at client locations within the State of California at any time during the applicable limitation periods preceding the original filing of this Complaint up through the present and until compliance with the law. Additionally, Plaintiff brings this action as a representative action on behalf of all aggrieved employees. Plaintiff seeks recovery of all allowable compensation and other sums for the violations described above, including unpaid minimum wages, Labor Code § 1194.2 liquidated damages for failure to pay all statutorily-mandated minimum wages, penalties/premium pay for missed meal periods, restitution and restoration of sums owed and property unlawfully withheld, statutory penalties, interest, attorneys' fees, and costs.

III. FACTUAL ALLEGATIONS

9. MADISON provides workers on a contract basis for its clients that operate power plants or other industrial plants. The work is performed at multiple locations in the State of California, including but not limited to the Conoco Phillips refinery in Rodeo, California.

10. At all relevant times, Plaintiff was employed by MADISON as an hourly non-exempt employee in an on-site construction occupation as defined by § 2(C) of IWC Wage Order 16-2001. During his employment with MADISON, Plaintiff worked six days a week, and typically worked 10 or more hours a day.

11. Labor Code § 1194 requires that employers pay employees at least the minimum wage for all hours worked. Defendants had a policy and practice of failing to pay any wages whatsoever, including the minimum wage, to employees for compensable pre-shift and post-shift time, including time spent traveling on and/or waiting for and/or operating company-provided transportation to, from and/or within the refineries and other facilities, donning and doffing safety

1 gear, and/or picking up brass. Further, Labor Code § 1194.2 provides for liquidated damages for
2 violations of the Labor Code § 1194 statutory minimum wage requirements. Plaintiff, on behalf of
3 himself and other putative class members, seeks the liquidated damages available under Labor Code
4 § 1194.2.

5 12. At all relevant times, Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001,
6 § 10(B) require employers to provide employees with (1) a first meal period of not less than 30
7 minutes' duration, during which they are relieved of all duty, before they have worked more than
8 five hours in a day and (2) a second duty-free meal period of not less than 30 minutes' duration,
9 during which they are relieved of all duty, before they have worked more than 10 hours in a day.
10 Additionally, as alleged herein, Plaintiff and other putative class members worked more than 10
11 hours in a day and MADISON had a policy and practice of failing to provide them with all timely
12 and required uninterrupted meal periods of at least 30 minutes' duration. Plaintiff alleges that he
13 and, on information and belief, other putative class members never waived their right to a second
14 meal period. Further, Plaintiff and other putative class members sometimes worked more than 12
15 hours in a day. Under Labor Code § 512(a), second meal periods are not waivable for employees
16 who work more than 12 hours in a day.

17 13. Labor Code § 226 provides that every employer is required, "semimonthly or at the
18 time of each payment of wages," to give each employee an itemized wage statement that includes
19 "gross wages earned." Defendants had a policy and practice of violating Labor Code § 226 by
20 failing to provide complete and accurate itemized wage statements to Plaintiff and the putative class
21 members in that the wage statements provided did not, among other things, include the accurate
22 hours worked and the correct gross wages earned.

23 14. Defendants had a policy and practice of violating California Labor Code §§ 201-
24 203 by failing to pay Plaintiff and putative class members all wages due and owing at the time of
25 discharge or voluntary quit. Plaintiff and putative class members still are owed wages, including
26 without limitation the statutory minimum wage, for unpaid time spent traveling on and/or waiting
27 for and/or operating company-provided transportation to, from and/or within the refineries and
28 other facilities.

15. Defendants had a policy and practice of failing to pay employees in a timely manner as required by Labor Code § 204b.

IV. CLASS ACTION ALLEGATIONS

16. Plaintiff brings this action on behalf of himself and as a class action under Code of Civil Procedure § 382 on behalf of a class of similarly situated persons employed by MADISON in the State of California. Specifically, Plaintiff seeks to represent the class of all hourly non-exempt on-site employees who performed work for MADISON at job sites located within the State of California at any time during the applicable limitation periods preceding the original filing of this Complaint and up through the present and until compliance with the law. Plaintiff also seeks to represent the following sub-classes of employees who worked for MADISON at job sites within the State of California:

(a) All hourly non-exempt on-site employees who performed work for MADISON at any time during the applicable limitations periods preceding the original filing of this Complaint and up through the present and until compliance with the law, inclusive, who were not paid any wages whatsoever, including the minimum wage, for certain compensable pre-shift and post-shift time, including time spent traveling on and/or waiting for and/or operating company-provided transportation to, from and/or within the refineries and other facilities, donning and doffing safety gear, and/or picking up brass;

(b) All hourly non-exempt on-site employees who performed work for MADISON at any time during the applicable limitation periods preceding the original filing of this Complaint and up through the present and until compliance with the law, inclusive, who worked more than 10 hours in a day and were not provided all meal periods required by law;

(c) All hourly non-exempt on-site employees who performed work for MADISON at any time during the applicable limitation periods preceding the original filing of this Complaint and up through the present and until

1 compliance with the law, inclusive, who did not receive complete and
2 accurate wage statements; and

3 (d) All hourly non-exempt on-site employees who performed work for
4 MADISON at any time during the applicable limitation periods preceding
5 the original filing of this Complaint and up through the present and until
6 compliance with the law, inclusive, who were not paid all wages due upon
7 discharge or voluntary quit as required by Labor Code §§ 201-203.

8 17. The class and sub-classes that Plaintiff seeks to represent contain numerous
9 members and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the
10 California Rules of Court to amend or modify the class and sub-class descriptions with greater
11 specificity or further division into additional sub-classes or limitation to particular issues.

12 18. By their unlawful practices and policies, Defendants have violated the rights of
13 employees under the laws and regulations of the State of California. The questions raised are,
14 therefore, of common or general interest to the class members, who have a well-defined community
15 of interest in the questions of law and fact raised in this action.

16 19. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has
17 suffered in the past from the same violations of the law as other members of the proposed class.
18 Plaintiff has retained competent counsel to represent himself and the class, and Plaintiff will fairly
19 and adequately represent the interests of the class.

20 20. This action may properly be maintained as a class action under Code of Civil
21 Procedure § 382 because there is a well-defined community of interest in the litigation and the
22 proposed class and sub-classes are easily ascertainable.

23 **Numerosity**

24 21. The members of the proposed class are so numerous that joinder of all class
25 members is impractical. While the precise number of class members has not been determined at
26 this time, Plaintiff is informed and believes that Defendants have employed as many as 600 workers
27 or more in the relevant time period.

28 22. Plaintiff alleges that Defendants' employment records would contain relevant

information as to the number of members of the proposed class.

Commonality

23. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of violating Labor Code § 1194 by failing to pay class members for all hours worked;
- (b) Whether Defendants had a policy and practice of failing to provide class members with all of their required meal periods;
- (c) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as gross wages earned, and whether those statements were accurate;
- (d) Whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing class members all wages, including statutory minimum wages, due at the time of discharge or voluntary quit; and
- (e) Whether Plaintiff and the class members are entitled to equitable relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

24. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and economic loss arising out of and caused by Defendants' common course of conduct in violation of laws and regulations alleged in this Complaint.

25. Plaintiff will fairly and adequately protect the interests of all proposed class members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions and in representing employees and protecting employees' rights.

//

Superiority of Class Action

26. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

Class action treatment will allow those similarly-situated persons to litigate their claims in the manner that is most effective and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class members is impractical. Even if every proposed class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of numerous cases were to be required. Individualized litigation also would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action with respect to some or all of the issues presented herein gives rise to fewer management difficulties, conserves the resources of the court system and the parties and protects the rights of each proposed class member. Further, it prevents the very real harm that would be suffered by numerous putative class members who simply will be unable to enforce individual claims of this size on their own, and by Defendants' competitors, who will be placed at an unfair competitive disadvantage as their punishment for obeying the law. Plaintiff does not anticipate difficulties in the management of this action.

V. REPRESENTATIVE ACTION

28. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site employees who performed work within the State of California and were not paid any wages

1 whatsoever, including minimum wage, for certain hours worked, including their time spent
2 traveling on and/or waiting for and/or operating company-provided transportation.

3 29. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
4 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
5 employees who performed work within the State of California and were not paid in accordance
6 with Labor Code § 510 and Wage Order No. 16-2001 for hours worked in excess of eight in a day
7 or 40 in a week.

8 30. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
9 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
10 employees who performed work for MADISON at job sites located in the State of California and
11 were not provided their required meal periods.

12 31. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
13 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
14 employees who performed work for MADISON at job sites located in the State of California and
15 were not authorized or permitted to take all of their required rest periods.

16 32. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
17 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
18 employees who performed work for MADISON at job sites located in the State of California and
19 did not receive the complete and accurate itemized wage statements required by Labor Code §§
20 226(a) and 226.3.

21 33. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
22 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
23 employees who performed work for MADISON at job sites located in the State of California and
24 were not paid all wages due at the time of discharge or voluntary quit as required by Labor Code
25 §§ 201-203.

26 34. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
27 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
28 employees who performed work for MADISON at job sites located in the State of California and

1 were not paid all wages in a timely manner as required by Labor Code § 204b.

2 35. There is a well-defined community of interest in the questions of law and fact
3 affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees'
4 claims against Defendants involve questions of common or general interest including but not
5 limited to the following: (1) whether Defendants had a policy and practice of failing to pay
6 aggrieved employees any wages whatsoever, including minimum wage, for certain hours worked,
7 including their time spent traveling and/or waiting for and/or operating company-provided
8 transportation to, from and/or within the refineries and other facilities; (2) whether Defendants had
9 a policy and practice of violating Labor Code § 510 and Wage Order No. 16-2001 by failing to pay
10 aggrieved employees for hours worked in excess of eight in a day or 40 in a week; (3) whether
11 Defendants had a policy and practice of failing to provide aggrieved employees with all of their
12 required meal periods; (4) whether Defendants had a policy and practice of failing to provide
13 aggrieved employees with all of their required rest periods; (5) whether Defendants had a policy
14 and practice of violating Labor Code §§ 226 and 226.3 by failing to provide required information
15 on wage statements, such as gross wages earned, and whether those statements were accurate; (6)
16 whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay
17 departing aggrieved employees all wages due at the time of discharge or voluntary quit; (7) and
18 whether Defendants had a policy and practice of violating Labor Code § 204b by failing to pay
19 aggrieved employees in a timely manner.

20 36. Plaintiff's experiences are typical of the experiences of the aggrieved employees
21 whom Plaintiff seeks to represent on a PAGA representative basis and his interests are consistent
22 with, and not antagonistic to, those of the State of California and the other aggrieved employees.
23 Plaintiff will fairly and adequately represent the interests of the State of California and the
24 aggrieved employees whom he seeks to represent because Plaintiff also is an aggrieved employee
25 and his claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who
26 are experienced in the prosecution of class and representative actions, and Plaintiff intends to
27 prosecute this action vigorously.

28 37. Common questions of law and fact exist as to all aggrieved employees and

predominate over any other questions affecting only individual aggrieved employees.

38. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees and the State of California.

VI. FIRST CAUSE OF ACTION

(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

39. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

40. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

41. Beginning at an exact date unknown to Plaintiff, but at least during the applicable limitations period preceding the original filing of this Complaint and up through the present, Defendants committed unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business practices including, but not limited to, violations of:

- (a) Labor Code § 1194 (failure to pay all wages due, including minimum wages);
- (b) Labor Code §§ 226.7 and 512 (failure to provide meal periods);
- (c) Labor Code § 226 (failure to provide accurate itemized wage statements);
- (d) Labor Code §§ 201-203 (failure to pay all wages, including statutory minimum wages, due and owing at time of discharge or voluntary quit); and
- (e) Industrial Welfare Commission IWC Wage Order No. 16-2001.

42. The violations of those laws and the acts and practices described in this Complaint constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

43. As a direct and proximate result of those acts and practices, Defendants have received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and the class, in that Defendants have profited in those amounts from their unlawful practices.

44. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of unfair competition and may order Defendants to make restitution to Plaintiff for the practices alleged in this Complaint. Plaintiff and putative class members are entitled under Business and Professions Code §§ 17203 and 17208 to restitution and restoration of all wages unlawfully withheld at any time during the applicable limitations period preceding the original filing of this Complaint and up through the present and until the violations have been corrected, together with all civil penalties owed in connection with those violations. Plaintiff will, upon leave of the Court, amend this Complaint to state those amounts when they are ascertained.

45. Plaintiff's success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of himself and the general public. Plaintiff seeks and is entitled to unpaid wages and any other remedy owing to Plaintiff and all others similarly situated.

46. To prevent Defendants from profiting and benefiting from their wrongful and illegal policies and practices, an order requiring Defendants to restore to Plaintiff and class members all monies and property unlawfully gained through Defendants' unlawful practices is appropriate and necessary.

47. Plaintiff takes upon himself enforcement of these laws and lawful claims. There is a financial burden incurred in pursuing this action and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure § 1021.5.

Wherefore, Plaintiff prays for relief as set forth below.

VII. SECOND CAUSE OF ACTION
(UNPAID MINIMUM WAGES AND LIQUIDATED DAMAGES – LABOR CODE §§
1194 AND 1194.2)

48. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

49. Defendants had a policy and practice of failing to pay Plaintiff and other putative

class members for certain compensable pre-shift and post-shift time, including time spent traveling on and/or waiting for and/or operating company-provided transportation to, from and/or within the refineries and other facilities, donning and doffing safety gear, and/or picking up brass.

50. Plaintiff seeks to recover all unpaid minimum wages due to Plaintiff and other putative class members, as well as liquidated damages, if appropriate, and interest, under Labor Code §§ 1194, 1194.2 and 218.6.

51. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides for a private right of action to recover unpaid minimum wage compensation and also provides for the recovery of attorneys' fees and costs by a prevailing employee.

Wherefore, Plaintiff prays for relief as set forth below.

VIII. THIRD CAUSE OF ACTION

(UNPAID MINIMUM WAGES –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

52. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

53. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

54. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 1194, 1197, 1197.1, 1198 and 1199.

55. By the actions alleged herein, Defendants violated Labor Code §§ 510, 1194, 1197, 1197.1, 1198 and 1199 by failing to pay Plaintiff and other aggrieved employees overtime pay on all occasions when it was required by law and failing to pay aggrieved employees any wages, including minimum wages and overtime pay, for certain hours worked.

56. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 1194, 1197, 1197.1, 1198 and 1199.

57. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §§

1194 and 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

IX. FOURTH CAUSE OF ACTION
(FAILURE TO PROVIDE MEAL PERIODS)

58. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

59. At all relevant times, the Defendants were “employers” of Plaintiff and members of the proposed class within the meaning of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, § 2(I).

60. At all relevant times, Plaintiff and members of the proposed class were “employees” of Defendants within the meaning of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, § 2(H). Plaintiff and members of the proposed class also were employed by Defendants in on-site construction occupations, as defined in and within the meaning of IWC Wage Order 16-2001, § 2(C).

61. At all relevant times, Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, § 10 have provided that employees must receive a first meal period of not less than 30 minutes before they have worked more than five hours in a day and a second meal period of not less than 30 minutes before they have worked more than 10 hours in a day.

62. As alleged above, Defendants required Plaintiff and members of the proposed class at various times to work more than 10 hours in a single day, including, occasionally, shifts longer than 12 hours. On those occasions when Plaintiff and members of the proposed class worked more than 10 hours in a single day, Defendants had a policy and practice of refusing and/or failing to provide employees with all of the duty-free meal periods that are mandated by Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, § 10(B). Plaintiff alleges that he and, on information and belief, other members of the proposed class did not waive their rights to a second meal period.

63. Defendants’ practices of failing to provide employees timely and uninterrupted meal periods of not less than 30 minutes and of requiring employees to work through those meal periods violate Labor Code §§ 226.7 and 512(a) and IWC Wage Order 16-2001, § 10(B).

64. Plaintiff and members of the proposed class have lost money as a direct result of Defendants' unlawful practices as alleged above in that they were required to work shifts longer than 10 hours, were not provided their required meal periods, and were not compensated correctly for not having been provided those meal periods, respectively. Accordingly, Plaintiff and members of the proposed class are entitled to proper compensation, restitution and premium pay for each meal period that was not provided as required by law and to the waiting time penalties arising from those violations.

65. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred in this action under Code of Civil Procedure § 1021.5.

Wherefore, Plaintiff prays for relief as set forth below.

X. FIFTH CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

66. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

67. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

68. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

69. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 512, 1198 and 1199.

70. By the actions alleged herein, Defendants failed to provide all required meal periods in violation of Labor Code §§ 226.7, 512, 1198 and 1199.

71. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 1198 and 1199.

72. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §

2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XI. SIXTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

73. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

74. As alleged above, during all or some portion of the proposed class period, Defendants violated Labor Code § 226 through their practice of failing to provide their employees, including Plaintiff and members of the proposed class, with complete and accurate itemized wage statements. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state accurately the gross wages earned and the actual hours worked by each employee.

75. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the statute, up to a maximum of \$4,000 per employee.

76. Under Labor Code § 226(e), Plaintiff is entitled to an award of attorneys' fees and costs incurred in bringing this action.

Wherefore, Plaintiff prays for relief as set forth below.

XII. SEVENTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

77. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

78. California Labor Code § 2699(f) permits "aggrieved employees," acting on their own behalf and on behalf of the State of California and other current and former employees, to recover certain penalties.

79. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code

Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

80. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226(a).

81. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above, Defendants employed and employ a policy and practice of violating Labor Code § 226(a) by failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees. Among other violations, the wage statements that Defendants provided did not and do not include the accurate hours worked and the correct gross wages earned.

82. Therefore, Plaintiff, for himself and all current and former aggrieved employees and on behalf of the State of California, demands the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

83. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XIII. EIGHTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

84. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

85. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the times specified by law. Labor Code § 203 provides that if an employer willfully fails to pay those wages within the times specified by Labor Code §§ 201 or 202, the employer must continue to pay the subject employees' wages day-by-day, weekends included, until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

86. Defendants unfairly and unlawfully have had a policy and practice of violating Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned during their

employment within the times specified by those sections.

87. Plaintiff and all other putative class members who ceased employment with Defendants are entitled to unpaid compensation but thus far have not received that compensation.

88. More than 30 days have passed since Plaintiff and certain class members left Defendants' employ.

89. Due to Defendants' willful failure to compensate Plaintiff and putative class members timely for all hours worked, Plaintiff and class members whose employment ended at any time the during the applicable limitations period preceding the original filing of this Complaint and up through the present and until compliance with the law are entitled to 30 days' wages under Labor Code § 203, together with interest.

Wherefore, Plaintiff prays for relief as set forth below.

XVI. NINTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

90. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

91. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

92. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

93. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

94. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

95. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

96. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §

2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. TENTH CAUSE OF ACTION

(LABOR CODE § 204b –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

97. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

98. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

99. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

100. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204b.

101. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 204b as it relates to Plaintiff and the other aggrieved employees.

102. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204b.

103. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For an order certifying this action as a class action;
- ii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of failing to pay all minimum wage compensation owed

to Plaintiff and the class members in violation of Business and Professions Code §§ 17200, *et seq.*;

- iii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of violating Business and Professions Code §§ 17200, *et seq.* by failing to provide proper meal periods and to pay all premium wages due and owing for those failures;
- iv. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid minimum wage compensation owed to Plaintiff and the class members for the policy and practice of failing to pay all wages due and owing, as well as liquidated damages as appropriate, during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;
- v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 510, 1194, 1197, 1197.1, 1198 and 1199 (failure to pay minimum, overtime and double-time wages) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;
- vi. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiff and class members for missed meal periods due and owing during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;
- vii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code

§§ 226.7, 512(a), 1198 and 1199 (missed meal periods and missed rest periods) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;

viii. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the original filing of this Complaint and up through and including the present and until the date of compliance with the law;

ix. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law.)

x. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;

xi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the original filing of the

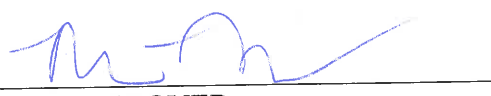
Complaint and up through and including the present and until the date of compliance with the law;

- xii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each aggrieved employee for each violation of Labor Code § 204b (failure to pay wages in a timely manner) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;
- xiii. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 226(e), 1194(a) and 2699(g)(1) and Code of Civil Procedure § 1021.5;
- xiv. For all interest as required by Labor Code § 218.6 and other applicable law;
- xv. For all costs of this suit as allowed by law, including Labor Code §§ 218.5, 226(e), 1194 and 2699(g)(1); and
- xvi. For such other and further relief as the Court may deem proper.

Dated: November 19, 2020

Respectfully submitted,

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT SPENCER

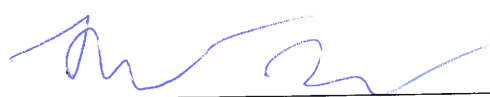
Attorneys for Plaintiff and the Proposed Class

JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: November 19, 2020

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **November 19, 2020** in the case of *Sica v. Madison Industrial Services Team, L.P., et al.*, Alameda Superior Court Case Number RG20076869, I served the foregoing document(s):

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT
on the interested party(ies) below, using the following means:

Madison Industrial Services Team, L.P. *Registered Agent for Defendant*
c/o CT Corporation System **Madison Industrial Services Team, L.P.**
Amanda Garcia
Vivian Imperial
Registered Agents for Service of Process
818 West Seventh Street, Suite 930
Los Angeles, California 90017

☒	(BY UNITED STATES MAIL) I sealed the envelope(s), with postage thereon fully prepaid, and on the date below, following ordinary business practices, I placed it for collection and mailing in the United States Postal Service, in San Francisco, California.
☐	(BY OVERNIGHT DELIVERY) I placed a true copy in a sealed envelope addressed as indicated above this date. I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery. It is deposited in a Federal Express depository on that same day in the ordinary course of business for delivery to the parties above the next business day. (CCP §1013)
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ