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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KEVIN LARUE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

DIAMOND ENVIRONMENTAL
SERVICES, LP; DIAMOND
MAINTENANCE SERVICES, LLC;
DIAMOND POWER SERVICES, INC.;
DIAMOND SOLID WASTE SERVICES,
INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2020-00031678-CU-OE-CTL

*Assigned for all purposes to
Hon. Judge Eddie C. Sturgeon; Dept. C-67*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/08/2021 at 10:04:00 AM

Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

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

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kevin Larue (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 against defendants Diamond Environmental Services, LP; Diamond Maintenance Services,
7 LLC; Diamond Power Services, Inc.; Diamond Solid Waste Services, Inc.; and DOES 1
8 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually and on
9 behalf of California residents who are and were employed by Defendants as non-exempt
10 employees throughout California.

11 2. Defendants provide cleaning and utility services in California.

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

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

- 18 (a) failing to pay all wages (including minimum wages and overtime
19 wages);
- 20 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (c) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (d) failing to provide accurate itemized wage statements;
- 24 (e) failing to reimburse necessary business expenses; and
- 25 (f) failing to pay all wages due upon separation of employment.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
27 others similarly situated in California to recover, among other things, unpaid wages and
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

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

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

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

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

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

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

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

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

23 **CLASS ACTION ALLEGATIONS**

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

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

1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California residents currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between April 6, 2016¹
5 and the date of class certification ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 between April 6, 2017 and the date of class certification ("Subclass" or "Waiting
10 Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants fail to pay Plaintiff and Class Members all wages
20 (including minimum wages and overtime wages) for all hours worked by
21 Plaintiff and Class Members.

22 (b) Whether Defendants required Plaintiff and Class Members to work over
23 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
24 hours per week, and/or seven (7) consecutive days and failed to pay them
25 overtime compensation at the proper rate.

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

- 1 (c) Whether Defendants deprived Plaintiff and Class Members of timely
2 meal periods or required Plaintiff and Class Members to work through
3 meal periods without proper compensation.
- 4 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks
5 or required Plaintiff and Class Members to work through rest breaks
6 without proper compensation.
- 7 (e) Whether Defendants failed to provide Plaintiff and Class Members
8 accurate itemized wage statements.
- 9 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
10 wages due upon termination or within seventy-two (72) hours of
11 resignation.
- 12 (g) Whether Defendants required Plaintiff and Class Members to incur
13 business expenses without reimbursing them.
- 14 (h) Whether Defendants' conduct was willful or reckless.
- 15 (i) Whether Defendants engaged in unfair business practices in violation of
16 Business and Professions Code §§ 17200, *et seq.*

17 25. There is a well-defined community of interest in this litigation and the proposed
18 Class and Subclass are readily ascertainable:

19 (a) Numerosity: The Class Members are so numerous that joinder of all
20 members is impractical. Although the members of the entire Class and Subclass are unknown
21 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
22 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
23 inspection of Defendants' employment and payroll records.

24 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
25 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
26 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
27 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
28

1 sustained by the Class Members because they arise out of and are caused by Defendants'
2 common course of conduct as alleged herein.

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

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

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

24 **GENERAL ALLEGATIONS**

25 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
26 California residents as non-exempt employees at Defendants' California business location(s).

27 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
28 California business location(s).

1 28. Defendants continue to employ non-exempt employees within California.

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

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and Class Members were entitled to receive wages for all time
8 worked (including minimum wages and overtime wages) and that they were not receiving all
9 wages earned for work that was required to be performed. In violation of the Labor Code and
10 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
11 wages and overtime wages) for all hours worked at the appropriate rate.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Class Members were entitled to receive all required meal
14 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
15 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
16 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
17 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
18 rate of pay when they did not receive a timely, uninterrupted meal period.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
21 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
22 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
23 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
24 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive itemized wage
27 statements that accurately showed the following information pursuant to the Labor Code: (1)
28 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units

1 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
2 deductions, provided that all deductions made on written orders of the employee may be
3 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
4 for which the employee is paid; (7) the name of the employee and only the last four digits of his
5 or her social security number or an employee identification number other than a social security
6 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at
8 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
9 were not provided with accurate itemized wage statements.

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

14 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to reimbursement for
16 necessary expenditures incurred in connection with the performance and execution of their job
17 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
18 adequate reimbursement for necessary business expenses, including but not limited to
19 reimbursement for use of their personal cell phones and gas purchases.

20 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known they had a duty to compensate Plaintiff and Class Members, and
22 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
23 intentionally failed to do so in order to increase Defendants' profits.

24 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
25 against Defendants on behalf of himself and all Class Members to recover, among other things,
26 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
27 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
28 expenses.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order)

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

6 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 40. During the relevant time period, Defendants paid Plaintiff and Class Members
10 less than minimum wages when they failed to pay proper compensation for all hours worked,
11 including time worked during missed and/or interrupted meal periods and other off-the-clock
12 work. To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
13 Members were not being paid at least the lawful minimum wage for their work.

14 41. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
16 §§ 1194 and 1197.

17 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
18 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
19 Members are entitled to recover the unpaid balance of their minimum wage compensation as
20 well as interest, costs, and attorneys' fees.

21 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
22 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
23 interest thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME**

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

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

1 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-half
3 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or
4 days worked by the person on a daily or weekly basis.

5 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
6 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
7 and one-half times (1½) their regular rate of pay when working and for all hours worked in
8 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
9 eight (8) hours of work on the seventh day of work in a workweek.

10 47. The applicable IWC Wage Orders further provide that Defendants are and were
11 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
12 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
13 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

14 48. California Labor Code § 510 codifies the right to overtime compensation at one
15 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
16 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
17 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
18 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
19 seventh day of work in a workweek.

20 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
21 employment of more than six days in a workweek is only permissible if the employer pays
22 proper overtime compensation as set forth herein.

23 50. Plaintiff and Class Members were non-exempt employees entitled to the
24 protections of California Labor Code §§ 510 and 1194.

25 51. During the relevant time period, Defendants required Plaintiff and Class
26 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a
27 seventh consecutive day in a workweek without paying Plaintiff and Class Members proper
28 overtime wages for their work.

1 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
2 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
3 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
4 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in
5 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of
6 work in a work week. Further, Plaintiff and Class Members were required to work through
7 meal periods without being compensated for these hours worked, which caused Plaintiff and
8 Class Members to not be paid the correct amount of overtime wages.

9 53. In violation of state law, Defendants knowingly and willfully refused to perform
10 their obligations and compensate Plaintiff and Class Members for all wages earned and all
11 hours worked, including, but not limited to time worked during missed and/or interrupted meal
12 periods as alleged above.

13 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
14 overtime and double time compensation, as required by California law, violates the provisions
15 of Labor Code §§ 510 and 1198, and is therefore unlawful.

16 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
17 recover their unpaid overtime and double time compensation as well as interest, costs, and
18 attorneys' fees.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

26 58. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
27 employ any person for a work period of more than five (5) hours without a meal period of not
28 less than 30 minutes, except that when a work period of not more than six (6) hours will

1 complete the day's work the meal period may be waived by mutual consent of the employer and
2 the employee."

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

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

13 61. During the relevant time period, Plaintiff and Class Members did not receive
14 compliant meal periods for working more than five (5) and/or ten (10) and/or fifteen (15) hours
15 per day because their meal periods were missed, late, short, interrupted, and/or they were not
16 permitted to take a second or third meal period.

17 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
18 requires an employer to pay an employee one (1) additional hour of pay at the employee's
19 regular rate of compensation for each work day that a compliant meal period is not provided.

20 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
21 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
22 § 226.7(b) and section 11 of the applicable IWC Wage Order.

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

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PERMIT REST BREAKS**

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

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

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

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

10 68. During the relevant time period, Plaintiff and Class Members did not receive a
11 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
12 they were required to work through their daily rest periods, were not permitted to take timely
13 rest periods, and/or were not authorized to take their rest periods.

14 69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
15 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
16 regular rate of compensation for each work day that a compliant rest period is not provided.

17 70. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
18 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
19 226.7(b) and section 12 of the applicable IWC Wage Order.

20 71. As a result of Defendants’ failure to pay Plaintiff and Class Members an
21 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
22 Members suffered and continue to suffer a loss of wages and compensation.

23 **FIFTH CAUSE OF ACTION**

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

25 (Violation of Labor Code § 226)

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

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

12 74. During the relevant time period, Defendants have knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
14 and Class Members. Defendants provided Plaintiff and Class Members with wage statements
15 that were missing or inaccurately stated one or more of the following items: (1) gross wages
16 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
17 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
18 provided that all deductions made on written orders of the employee may be aggregated and
19 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
20 employee is paid, (7) the name of the employee and the last four digits of his or her social
21 security number or an employee identification number other than a social security number, (8)
22 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate by the employee.

25 75. As a result of Defendants' knowing and intentional failure to comply with Labor
26 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
27 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
28 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor

1 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
2 their protected interest in receiving, accurate itemized wage statements under Labor Code
3 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
4 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
5 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
6 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
7 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
8 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
9 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
10 wages from Defendants.

11 76. Plaintiff and Class Members are entitled to recover from Defendants the greater
12 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
13 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
14 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
15 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

16 77. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
17 and Class Members from knowing, understanding, and disputing the wages paid to them and
18 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
19 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
20 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
21 shown according to proof at trial.

22 78. Class Members that are still employed by Defendants are also entitled to
23 injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with
24 California Labor Code § 226. Accordingly, affected Class Members seek the recovery of
25 attorneys' fees and costs incurred in obtaining this injunctive relief.

26 SIXTH CAUSE OF ACTION

27 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

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

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

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

3 86. Labor Code § 2800 states that an employer shall in all cases indemnify his
4 employee for losses.

5 87. Labor Code § 2802 requires employers to indemnify their employees for all
6 necessary expenditures or losses incurred by employees in direct consequence of the discharge
7 of their duties.

8 88. Section 9 of the applicable IWC Wage Order states that when tools or
9 equipment are required by the employer or are necessary to the performance of a job, such tools
10 and equipment shall be provided and maintained by the employer.

11 89. During the relevant time period, Defendants required Plaintiff and class
12 members to use their personal cellular devices for business purposes, without paying Plaintiff
13 and class members for a reasonable percentage of their cell phone bills, and required Plaintiff
14 and class members to incur gas expenses without reimbursement.

15 90. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
16 Plaintiff and class members for these expenses.

17 91. In committing the violations as herein alleged, Defendants have intentionally
18 and willfully failed to fully reimburse Plaintiff and class members for necessary business-
19 related costs and expenses. As a direct result, Plaintiff and class members have suffered and
20 continue to suffer substantial losses relating to the use and enjoyment of such compensation,
21 wages, expenses, and attorney's fees.

22 **EIGHTH CAUSE OF ACTION**

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

24 (Violation of Business and Professions Code §§ 17200, *et seq.*)

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

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1 93. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice .
3 ...”

4 94. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
5 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
6 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
7 suffer injuries-in-fact.

8 95. Defendants’ policies and practices violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all wages earned (including minimum wage and overtime
11 wages) to Plaintiff and Class Members in violation of Labor Code §§
12 510, 1182.12, 11194, 1194.2, 1197, and 1198.
- 13 (b) Failing to provide compliant meal periods without paying Plaintiff and
14 Class Members premium wages for every day said meal periods were not
15 provided in violation of Labor Code §§ 226.7 and 512.
- 16 (c) Failing to authorize or permit compliant rest breaks without paying
17 Plaintiff and Class Members premium wages for every day said rest
18 breaks were not authorized or permitted in violation of Labor Code §
19 226.7.
- 20 (d) Failing to provide Plaintiff and Class Members with accurate itemized
21 wage statements in violation of Labor Code § 226.
- 22 (e) Failing to timely pay all earned wages to the members of the Waiting
23 Time Subclass upon separation of employment in violation of Labor
24 Code §§ 201, 202, and 203.
- 25 (f) Failing to provide Plaintiff and Class Members with reimbursements for
26 necessary business expenses in violation of Labor Code § 2802.

27 96. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages

1 (minimum and overtime wages), failing to provide meal periods and rest breaks or
2 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
3 wages due and owing upon separation of employment in a timely manner, and failing to
4 reimburse business expenses, all in order to decrease their costs of doing business and increase
5 their profits.

6 97. At all relevant times herein, Defendants held themselves out to Plaintiff and
7 Class Members as being knowledgeable concerning the labor and employment laws of
8 California.

9 98. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
10 and Class Members wages and monies, thereby creating for Defendants an artificially lower
11 cost of doing business in order to undercut their competitors and establish and/or gain a greater
12 foothold in the marketplace.

13 99. As a result of Defendants' intentional, willful, purposeful, and wrongful
14 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
15 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
16 according to proof at trial.

17 100. By violating the foregoing statutes and regulations as herein alleged,
18 Defendants' acts constitute unfair and unlawful business practices under California Business
19 and Professions Code §§ 17200, *et seq.*

20 101. As a result of the unfair and unlawful business practices of Defendants, as
21 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
22 restitution in an amount to be shown according to proof at trial.

23 102. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
25 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
26 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
27 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
28 Procedure § 1021.5.

1 NINTH CAUSE OF ACTION

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

3 103. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
4 though fully set forth herein.

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

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

16 106. Defendants' conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

- 18 a. violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194, 1197,
19 and 1198 for failure to timely pay all earned wages (including minimum
20 wage and overtime wages) owed to Plaintiff and other aggrieved
21 employees during employment and upon separation of employment as
22 herein alleged;
- 23 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
24 periods to Plaintiff and other aggrieved employees and failure to pay
25 premium wages for missed meal periods as herein alleged;
- 26 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
27 Plaintiff and other aggrieved employees and failure to pay premium wages
28 for missed rest periods as herein alleged;

- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for all necessary business expenses as herein alleged; and
- f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

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

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

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

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

PRAYER FOR RELIEF

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

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For appointment of Kevin Larue as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and
15. For such other relief as the Court deems just and proper.

Dated: April 2, 2021

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff Kevin Larue