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15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SOLANO**

17 RICHARD THOMAS, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 DELTA TECH SERVICE, INC., a California
22 Corporation, and DOES 1-10, inclusive.

23 Defendant.

24 **CASE NO:**

25 **PLAINTIFF'S CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

26 **(1) FAILURE TO PAY MINIMUM WAGES**

27 **(LABOR CODE §§ 1194, 1194.2);**

28 **(2) FAILURE TO PAY OVERTIME (LABOR
CODE § 510);**

**(3) FAILURE TO PROVIDE REST PERIODS
AND PAY MISSED REST BREAK PREMIUMS
(LABOR CODE §§ 226.7; IWC WAGE ORDER
NO. 16);**

**(4) FAILURE TO PROVIDE MEAL PERIODS
AND PAY MISSED MEAL PERIOD
PREMIUMS (LABOR CODE §§ 226.7, 512, IWC
WAGE ORDER NO. 16);**

**(5) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);**

**(6) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**

**(7) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)**

**(8) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204); AND**

**(9) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5);**

DEMAND FOR JURY TRIAL

1 Plaintiff Richard Thomas (“Plaintiff”), on behalf of himself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public, against Delta Tech Service, Inc. and DOES 1 to 100 (“Defendant”) for
8 (1) its failure to pay minimum wages; (2) its failure to pay overtime wages; (3) its failure to
9 provide compliant rest breaks and pay missed rest break premiums to its current and former
10 employees in California; (4) its failure to provide meal periods and pay missed meal period
11 premiums to its current and former employees in California; (5) its failure to provide complete
12 wage statements to its current and former employees in California within the one year prior to the
13 filing of this Complaint; (6) its failure to pay all wages due to former employees based on the
14 foregoing; (7) its failure to pay timely wages to employees based on the foregoing; (8) unfair
15 business practices based on the foregoing; and (9) PAGA and other penalties based on the
16 foregoing. As a result of the foregoing, Defendant has violated California statutory laws as
17 described below.

18 2. The “Class Period” is designated as the period from four years prior to the filing of
19 this action through the trial date. The PAGA class period is one year from the sending of
20 Plaintiff’s PAGA letter to the LWDA through the present and on-going. Defendant’s violations of
21 California’s wage and hour laws and unfair competition laws, as described more fully below, have
22 been ongoing throughout the Class Period.

23 **VENUE**

24 3. Venue is proper in this county under section 395.5 of the California Code of Civil
25 Procedure. Many of the putative Class Members were employed and/or performed work during
26 the Class Period by Defendant in Solano County. Defendant is in the business of delivering
27 chemical cleaning, process decontamination and providing maintenance services to a wide range
28 of industries throughout California. Many of the acts alleged herein including Defendant’s failure

1 to pay minimum wages, failure to pay overtime, its failure to provide Labor Code complaint meal
2 and rest breaks, and its failure to pay missed meal and rest break premiums occurred in Solano
3 County. Moreover, Defendant's headquarters is in the city of Benicia, Solano County. Venue is
4 therefore proper in Solano County.

5 **JURISDICTION**

6 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
7 dollars of business by providing its clients with new innovative processes and new technologies in
8 California. Thus, Defendant has obtained the benefits of the laws of the State of California. In
9 addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings causes of
10 action based solely on, and arising from, California law. The claims of the class are also based
11 solely on California law described herein. Furthermore, the total amount at issue in this case,
12 inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is appropriate in Solano
13 County Superior Court.

14 **THE PARTIES**

15 5. Plaintiff Richard Thomas is a California resident who worked for Defendant from
16 November 2018 to October 2020.

17 6. From at least four years from the filing of this complaint through the present, and
18 on-going, Defendant's employees, including Plaintiff during his employment, were not paid by
19 Defendant for their time while commuting to the worksites. Plaintiff and the Aggrieved employees
20 were using Defendant's vehicles to travel to worksites, often requiring at least one-hour drive time,
21 time during which they were not compensated. The employer's vehicle was a truck where Plaintiff
22 and the Aggrieved Employees were driving, and were also carrying therein equipment to perform
23 their duties. Moreover, Plaintiff was not paid overtime; did not receive payment for the non-
24 productive time; did not receive premium payments for non-compliant rest periods; was not
25 provided timely duty-free meal breaks or paid missed meal break premiums; was not provided
26 accurate and/or complete wage statements; did not receive timely wages; and did not receive all of
27 their wages due upon termination of employment.

28 7. Plaintiff represents the state of California and the following group of aggrieved

1 employees defined as:

2 All individuals who hold or held the title of maintenance technician or maintenance
3 worker, or in any other similar capacity, and who worked for Defendant in California
4 during the PAGA Period (hereinafter referred to as “Aggrieved Employees”).

5 8. Defendant is a California corporation with its principal place of business in Benicia,
6 CA. Defendant is a chemical company that provides a wide range of services and transacts
7 millions of dollars of business by providing maintenance services to numerous facilities
8 throughout California.

9 9. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
11 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
12 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
13 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
14 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become known.

16 10. Plaintiff is informed and believe, and based thereon alleges, that each Defendant
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
19 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
20 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

21 11. Defendant employed Plaintiff, the Class, and the Aggrieved Employees as
22 maintenance workers or technicians in California at various times during the Class Period.
23 Defendant employed approximately 100 maintenance workers or technicians in California during
24 the Class Period.

25 **FACTUAL ALLEGATIONS**

26 12. Defendant operates and, at all times during the Class Period, has done and does
27 business in California providing maintenance services in California. Defendant, in the course of
28 operating its business in California during the Class Period, employed Plaintiff, the Class, and the

1 Aggrieved Employees as maintenance workers or maintenance technician. Plaintiff, the Class, and
2 the Aggrieved Employees were paid by Defendant both hourly and prevailing wage.

3 13. During the Class Period, Plaintiff, like the other members of the Class and
4 Aggrieved Employees, typically worked twelve to fourteen hours per day and five to six days per
5 week. Class Members' and Aggrieved Employees' job duties included performing general repairs
6 and maintenance to Defendant's projects.

7 14. Labor Code § 1197 states the California requirement that employees must be paid at
8 least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the
10 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
11 minimum wage." IWC Wage Order No. 16 also obligates employers to pay each employee
12 minimum wages for all hours worked.

13 15. These minimum wage standards apply to each hour employees worked for which
14 they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked
15 by an employee is unlawful, *even if averaging an employee's total pay over all hours worked,*
16 *paid or not, results in an average hourly wage above minimum wage.* *Armenta v. Osmose,*
17 *Inc.*, 135 Cal.App.4th 314, 324 (2005).

18 16. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any
19 action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as
20 Plaintiff, were not paid for all hours worked under Labor Code § 1194, the employee may recover
21 minimum wages for the time worked for which they received no compensation. *See Sillah v.*
22 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
23 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
24 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 2016 U.S.
25 Dist. LEXIS 172319, at *20-21 (N.D. Cal. Dec. 12, 2016).

26 17. Labor Code § 510 requires an employer to compensate an employee who works
27 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
28 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular

1 rate of pay for an employee. In accordance with Labor Code § 1194, Plaintiff, the Class, and the
2 Aggrieved Employees could not then agree to work for a lesser wage than the amount proscribed
3 by Labor Code §§ 510 and 1194.

4 18. Due to Defendant's policy of failing to pay Plaintiff, the Class, and the Aggrieved
5 Employees and the Class for all of their hours worked while employed by Defendant or under
6 Defendant's control, Plaintiff, the Aggrieved Employees and the Class have not been paid all
7 minimum and overtime wages owed. Instead, Plaintiff, the Class, and the Aggrieved Employees
8 have only received compensation for the hours worked on the projects and not the hours they were
9 commuting in Defendant's vehicles. Thus, Plaintiff, the Class, and the Aggrieved Employees were
10 not paid minimum wages for all tasks performed during their workday, by Defendant. As a result,
11 Plaintiff, the Class, and the Aggrieved Employees have been denied compensation for all hours
12 worked, in violation of Cal. Labor Code §1194, and have been denied compensation at the
13 minimum wage in violation of Cal. Labor Code §§ 1197 and 1199.

14 19. Further, because Plaintiff, the Class, and the Aggrieved Employees did not receive
15 the overtime premium pay rates applicable to employees under California law for working in
16 excess of eight hours in a day, or more that forty hours in a workweek, in violation of IWC Wage
17 Order 16-2001, and Labor Code §§ 1194 and 510. On multiple occasions, Plaintiff, the Class, and
18 the Aggrieved Employees worked shifts that were longer than 8 hours in length.

19 20. Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to
20 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
21 applicable regulation, standard, or order of the Industrial Welfare Commission. . . ." Under IWC
22 Wage Order 7-2001 an employer must authorize and permit all employees to take ten (10) minute
23 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM Security*
24 *Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers must
25 relieve employees of all duties and relinquish control over how employees spend their time."). In
26 *Augustus*, the court expressly rejected the employer's assertion that it could provide an on-duty rest
27 period to employees who worked as security guards and further explained "that employers [must]
28 relinquish any control over how employees spend their break time, and relieve their employees of

1 all duties.” *Id.* at 273.

2 21. Section 12 of IWC Wage Order No. 16 states in pertinent part: “Every employer
3 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
4 in the middle of each work period. The authorized rest period time shall be based on the total
5 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
6 thereof.”

7 22. Further, the time spent taking rest periods must be compensable time, even if the
8 employee is otherwise paid only for their “productive” time. *See Bluford v. Safeway Stores, Inc.*,
9 216 Cal. App. 4th 864,872 (2013), reh'g denied (June 18, 2013), review denied (Aug. 28, 2013)
10 (“rest periods must be separately compensated in a piece-rate system. Rest periods are considered
11 hours worked and must be compensated.”) (*citing Armenta v. Osmose, Inc.* 135 Cal.App.4th
12 314,323 (2005)).

13 23. Here, the Defendant failed to implement a lawful rest period policy authorizing
14 Plaintiff, the Class, and the Aggrieved Employees to take a ten-minute duty-free rest break.
15 Defendant also failed to authorize and permit or provide paid rest periods to employees who
16 worked shifts in excess of ten (10) hours in a day. Instead, Defendant implemented an on-duty
17 meal period agreement indicating that the nature of his work as a service technician “could
18 potentially, depending on the circumstances of any particular work shift, prevent me from being
19 relieved of all duties and require me to remain on duty during meal periods.” See **Exhibit A**. It is
20 doubtful that this agreement is enforceable; however, to the extent it is or was ever true that the
21 nature of the work prevented technicians from going off-duty for meal periods, then on all such
22 days, Plaintiff, the Class, and the aggrieved employees would have been forced to remain on duty
23 for rest breaks, too, which would trigger rest break premium payments. See *Augustus*, 2 Cal. 5th at
24 269.-273.¹ Similarly, it would have been impossible for Class Members and Aggrieved Employees

25
26 ¹ It is logically impossible that Defendant’s meal period waiver is valid *and* that Plaintiff, the Class, and the aggrieved
27 employees were provided with off-duty rest periods. Either the nature of the work allows for employees being
28 relieved of all duties, or it does not. If the nature of the work allows for employees to be relieved of all duties, then
Defendant’s on-duty meal agreement, described below, is invalid. On the other hand, if the nature of the work does
not allow for technicians to be relieved of all duties, then Plaintiff, the Class, and the aggrieved employees were not
provided with any off-duty rest periods. Defendant cannot have it both ways.

1 to be relieved of duties for rest breaks.

2 24. The California Supreme Court explained in the context of rest breaks that employer
3 liability attaches from adopting an unlawful policy: “An employer is required to authorize and
4 permit the amount of rest break time called for under the wage order for its industry. If it does
5 not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for
6 employees working a seven-hour shift when two are required—***it has violated the wage order and***
7 ***is liable.***” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (emphasis added).

8 25. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
9 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
10 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
11 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
12 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
13 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
14 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*,
15 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by
16 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was
17 able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v.*
18 *Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

19 26. Here, not only did Defendant fail to have a compliant rest period policy, but
20 Defendant in fact has a policy that effectively penalized and subjected Plaintiff, the Class, and the
21 Aggrieved Employees to potential reprimand and/or discipline if Plaintiff, the Class, and the
22 Aggrieved Employees took rest breaks, which would often cause Plaintiff, the Class, and the
23 Aggrieved Employees to be late in completing projects for Defendant. Further, because of the
24 time-pressure nature of Plaintiff, the Class, and the Aggrieved Employees’ work schedule,
25 Plaintiff, the Class, and the Aggrieved Employees were sometimes not relieved of all duties while
26 working for Defendant.

27 27. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
28 Class, and the Aggrieved Employees were not compensated with one (1) hour’s worth of pay at

1 their regular rate of compensation when they were not provided with a compliant rest period in
2 accordance with Labor Code § 226.7(b).

3 28. Under California Labor Code Section 512 and IWC Wage Order No. 16, no
4 employer shall employ any person for a work period of more than five (5) hours without providing
5 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
6 (30) minutes, the employee is to be completely free of the employer's control and must not
7 perform any work for the employer. If the employee does perform work for the employer during
8 the thirty (30) minute meal period, the employee has not been provided a meal period in
9 accordance with the law. Also, the employee is to be compensated for any work performed during
10 the thirty (30) minute meal period.

11 29. Under California Labor Code Section 226.7, if the employer does not provide an
12 employee a meal period in accordance with these requirements, the employer shall pay the
13 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
14 that the meal period is not provided. Plaintiff, the Class, and the Aggrieved Employees worked
15 shifts that were longer than 5 hours in length. Here, despite the fact that Plaintiff, the Class, and the
16 Aggrieved Employees were never authorized to take their timely 30-minute duty-free meal breaks,
17 on or before the fifth and tenth hours of shifts, Defendant never paid any missed meal break
18 premiums to Plaintiff, the Class, and the Aggrieved Employees.

19 30. Furthermore, Defendant violated Labor Code § 512 by failing to advise Plaintiff,
20 the Class, and the Aggrieved Employees of their right to receive thirty (30) minute uninterrupted
21 meal periods within the first five hours of his shift.

22 31. Further, Defendant required Plaintiff, the Class, and the Aggrieved Employees to
23 sign an on-duty meal period agreement ("ODMPA") that is likely invalid. (See **Exhibit A**). First,
24 the ODMPA contains no clear language in which the service technicians, including Plaintiff, agree
25 to take an on-duty agreement in lieu of an off-duty 30-minute meal breaks, which is the crux of an
26 ODMPA. Thus, there is no actual "agreement" by the service technicians in Defendant's IDMPA
27 to take on-duty meal periods, instead of duty-free meal breaks, on or before the fifth hour of their
28 shifts, or at all.

1 32. Second, the ODMPA does not have any language authorizing 30 minute on-duty
2 meal periods within the first five hours of work, the timing of which is required by Labor Code
3 section 512, even when there is an ODMPA in play *See*, Cal. Labor Code § 512(a), 512(b), IWC
4 Wage Order Section 11(A) and *L'Chaim House, Inc. v. DLSE*, 38 Cal.App.5th 141 (“Thus, absent a
5 waiver, the statute's plain terms required L'Chaim to provide “a meal period”—whether off duty
6 or on-duty—of at least 30 minutes any time an employee worked at least five hours”). Thus,
7 ODMPs need to be recorded and tracked, just like off-duty meal breaks. See IWC Wage Order,
8 Section 7(a); see also *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 963
9 (employers have duty to record their employees' meal periods.)

10 33. Furthermore, in order for an on-duty meal period to be valid, the nature of the work
11 must truly *prevent* an employee from being relieved of duty. *See* IWC Wage Order, section 11(A).
12 The nature of the work exception is an affirmative defense, and thus the burden is on the employer
13 to plead and prove facts justifying on-duty meal periods. *Abdullah v. U.S. Security Associates,*
14 *Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959. In determining the validity of such agreements, courts
15 examine five factors: (1) the type of work; (2) the availability of other employees to provide relief
16 to an employee during a meal period; (3) potential consequences to the employer if the employee
17 is relieved of all duty during the meal period; (4) the ability of the employer to anticipate and
18 mitigate the consequences; and (5) whether work product or process will be destroyed or damaged
19 by relieving the employee of all duty. The court explained that this was not an exhaustive list of
20 factors and that the ““critical determination ... whether an on-duty meal period may be lawfully
21 provided by an employer is whether the employer can establish that the facts and circumstances in
22 the matter point to the conclusion that the nature of the work prevents the employee from being
23 relieved of all duty.”” *Id.* In a 2002 DLSE opinion letter, the department concluded that “an off-
24 duty meal period must be provided unless [the five] factors, taken as a whole, decisively point to
25 the conclusion that the nature of the work makes it virtually impossible for the employer to provide
26 the employee with an off-duty meal period”. Here, service technicians could easily be relieved of
27 duties for meal breaks or relieved by other employees. *See Dynabursky v. AlliedBarton Sec. Servs.*
28 *LP*, 2014 U.S. Dist. LEXIS 36915, 11-12 (C.D. Cal. Jan. 29, 2014) (employees who could relieve

1 others for breaks meant that ODMPA was invalid).

2 34. In examining on-duty meal period agreements, the “DLSE has emphasized that the
3 “on-duty meal period is a ‘limited[] alternative’ to the off-duty meal period requirement. DLSE
4 Opinion Letter 2009.06.09 at 8. Critically, it is ‘not described or defined as a *waiver* of an off-
5 duty meal period’ *id.* (emphasis added), but rather as ‘a *type* of meal period that can be lawfully
6 provided only in those circumstances in which the three express conditions set forth in [the
7 regulation] are satisfied.’” *Abdullah*, at 959. The courts have identified two categories of work
8 where the DLSE has found that the nature of the work exception applies: “(1) where the work has
9 some particular, external force that requires the employee to be on-duty at all times, and (2) where
10 the employee is the sole employee of a particular employer.” *Id.* Here, neither category applies,
11 since there is nothing external or specific to the work that would force breaks to be on-duty here,
12 and there are numerous service technicians working for Defendant, who could relieve one another
13 for breaks.

14 35. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
15 breaks arises when an employer adopts a uniform policy that fails to provide breaks. For example,
16 in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal applied *Brinker*: “In
17 *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful,
18 [defendant] would be liable only when it actually failed to provide a required off-duty meal break.
19 *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
20 [defendant]’s uniform on-duty meal break policy was unlawful.” (*Faulkinbury v. Boyd &*
21 *Associates, Inc.* (2013) 216 Cal.App.4th 220 The Court further explained: “the employer’s liability
22 arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the
23 employee was able to take the required break goes to damages” (*Ibid.* [citations omitted]; *see*
24 *also Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App. 4th 701, 728.)

25 36. Here, Defendant engaged in a common policy and practice of requiring Plaintiff,
26 the Class, and the Aggrieved employees to sign on-duty meal break agreements that were invalid,
27 since the nature of the work did not prevent service techs from going off-duty for meal breaks. (As
28 explained above, if such an agreement were valid, that would create a catch 22 for Defendant since

1 all of the rest breaks would be on-duty and thus non-compliant). Moreover, any on duty meals
2 were not tracked and were not provided within the first 5 hours of shifts. Finally, the ODMPA did
3 not actually contain an agreement from the signatories to take meal breaks on duty instead of off-
4 duty. As a result of Defendants' failure to authorize or permit lawful and timely meal periods,
5 Plaintiff and the other Class members and the Meal Period Aggrieved Employees frequently did
6 not receive compliant duty-free meal periods within the first five (5) hours of their work.

7 37. Defendant also failed to pay Plaintiff, the Class, and the Aggrieved Employees meal
8 period premiums for each workday that they did not receive compliant meal periods.

9 38. Pursuant to Labor Code 226.7(c), if an employer failed to provide an employee with
10 a meal or rest period, "the employer shall pay the employee one additional hour of pay at the
11 employee's regular rate of compensation for each workday that the meal or rest or recovery period
12 is not provided."

13 39. Furthermore, Defendant did not and does not issue adequate wage statements to
14 Plaintiff, the Class, and the Aggrieved Employees, under Labor Code Sections 226(a).

15 40. Due to, *inter alia*, Defendant's failure to pay Plaintiff, the Class, and the Aggrieved
16 Employees minimum wages, overtime payments, and meal and rest break premiums, the wage
17 statements issued by Defendants to Plaintiff, the Class, and the Aggrieved Employees do not
18 indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

21 41. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
22 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
23 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
24 that it was not providing total hours worked to plaintiff or other employees paid on commission"
25 even though it believed that employees paid solely on commission or commission and salary "are
26 exempt and therefore we do not record hours on a wage statement").

27 42. Defendant's failure to furnish accurate itemized wage statements has caused
28 Plaintiff, the Class, and the Aggrieved Employees to incur economic damages in that they were not

1 aware that they were owed and not paid additional compensation. *See Cicairos v. Summit*
2 *Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours shown
3 on the time cards or other records so that the employee must perform arithmetic computations to
4 determine the total hours worked during the pay period, the requirements of section 226 would not
5 be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
6 statements violated California Labor Code by not including, inter alia, total hours worked giving
7 rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*,
8 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage
9 statements did not “give an accurate report of the hours plaintiff worked, at least not on its face”);
10 Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated
11 Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily
12 determine the gross or net wages earned by the employee during the pay period).

13 43. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
14 Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To
15 obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section
16 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
17 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one
18 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
19 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
20 (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under §
21 2699(f) of PAGA.”).

22 44. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
23 employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
25 contract for a definite period quits his or her employment, his or her wages shall become due and
26 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
27 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
28 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement

1 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
2 an employee who is discharged or who quits, the wages of the employee shall continue as a
3 penalty from the due date thereof at the same rate until paid or until an action therefor is
4 commenced; but the wages shall not continue for more than 30 days.”

5 45. Following Plaintiff’s separation of employment from Defendant, he, like other
6 members of the Class and Aggrieved Employees who are former employees of Defendant, did not
7 receive all wages due, including all minimum wages, overtime, and his unpaid meal and rest
8 breaks during the Class Period, in violation of Labor Code Sections 201-203, triggering waiting
9 time penalties under those provisions.

10 46. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
11 employment are due and payable twice during each calendar month, on days designated in advance
12 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
13 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
14 wages are paid not more than seven calendar days following the close of the payroll period.”

15 47. Due to Defendant’s failure to pay Plaintiff, the Class, and the Aggrieved Employees
16 all minimum wages, meal and rest period premiums, and all overtime wages, Defendant failed to
17 timely pay Plaintiff, the Class, and the Aggrieved Employees within seven (7) days of the close of
18 the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See*
19 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
20 Cal. May 2, 2016) (finding that a failure to pay rest period premiums can support claims under
21 Labor Code §§ 203 and 204).

22 48. Pursuant to Labor Code Section 210, as amended,

23 (a) In addition to, and entirely independent and apart from, any other penalty
24 provided in this article, every person who fails to pay the wages of each employee as
25 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
26 shall be subject to a penalty as follows:

27 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
28 employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred
dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

(b) The penalty shall either be recovered by the employee as a statutory penalty

1 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
2 issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
3 contesting, and enforcing judgments for citations issued by the Labor Commissioner
4 under this section shall be the same as those set forth in subdivisions (b) through (k),
5 inclusive, of Section 1197.1.

(c) An employee is only entitled to either recover the statutory penalty provided for in
this section or to enforce a civil penalty as set forth in subdivision (a) of Section
2699, but not both, for the same violation.

49. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
210 for Defendant's violations of Labor Code Section 204.

50. The administrative prerequisites of PAGA were satisfied after 65 days elapsed from
November 15, 2020 (i.e., 65 days since Plaintiff's mailing of the PAGA notice with no further
communication from the LWDA to Plaintiff's counsel). Thus, as of January 21, 2021, this lawsuit
is timely. Plaintiff has also paid the \$75.00 fee and has otherwise satisfied the administrative
prerequisites of PAGA.

51. Plaintiff by this action seeks to recover, on behalf of himself and all other current
and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior
Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

18 CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
composed of and defined as: All individuals who hold or held the title of maintenance worker, or
in any other similar capacity worker for Defendant during the Class Period (hereinafter "Class
Members"). All such Class Members were subject to Defendant's unlawful policies including,
Defendant's failure to pay for all hours worked, Defendant's failure to pay overtime, Defendant's
failure to provide code-compliant meal and or rest breaks.

53. This action has been brought and may properly be maintained as a class action
under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
litigation, the proposed class is easily ascertainable, and Plaintiff are proper representatives of the

1 Class:

2 a. Numerosity: The potential members of the Class as defined are so
3 numerous that joinder of all the members of the Class is impracticable. While the precise number
4 of Class Members has not been determined at this time, Plaintiff is informed and believes that
5 Defendant has employed approximately 100 Class Members as maintenance workers or
6 technicians in California who were subject to Defendant's unlawful compensation, and meal and
7 rest break policies. The Class Members are dispersed throughout California. Joinder of all
8 members of the proposed classes is therefore not practicable.

9 b. Commonality: There are questions of law and fact common to Plaintiff and
10 the Class that predominate over any questions affecting only individual members of the Class.
11 These common questions of law and fact include, without limitation:

12 i. Whether Defendant violated sections 1194, 1194.2 of the Labor Code by
13 failing to pay Plaintiff and the members of the Class all minimum wages owed including
14 commuting time engaged in by members of the Class on a daily basis during the Class Period;

15 ii. Whether Defendant violated section 510 of the Labor Code by failing to pay
16 Plaintiff and the Class all overtime wages owed during the Class Period;

17 iii. Whether Defendant violated Section 12 of IWC Wage Order No. 16 by
18 failing to provide compliant rest periods to Plaintiff and the members of the Class in California
19 during the Class Period;

20 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of
21 IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member of the Class for
22 each day that a compliant rest break was not provided during the Class Period;

23 v. Whether Defendant violated Labor Code sections 226.7 and 512, and section
24 11 of IWC Wage Order No. 16 by failing to provide timely, off-duty meal periods to Plaintiff and the
25 Class Members in California during the Class Period;

26 vi. Whether Defendant violated Labor Code sections 512 and 226.7, and
27 section 11 of IWC Wage Order No. 16 by failing to pay one hour of premium pay to each member
28 of the Class for each day that a paid meal break was not provided during the Class Period;

vii. Whether Defendant failed to provide Plaintiff and the members of the Class complete wage statements in violation of Labor Code Section 226(a) and 226.2;

viii. Whether Defendant violated Section 203 of the Labor Code by failing to pay members of the Waiting Time Penalty Subclass for all wages due to them (including all minimum wages due, overtime, and meal and rest break premiums) upon their separation of employment from Defendant;

ix. Whether Defendant violated Sections 204 and 210 of the Labor Code by failing to pay member of the Class all wages due on a timely basis;

x. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide compliant rest breaks to members of the Class in violation of Section 12 of IWC Wage Order No. 16;

xi. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and members of the Class with rest period premiums for each day they were not provided a compliant rest break;

xii. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and the members of the Class with timely, duty-free meal breaks during the Class Period;

xiii. Whether Defendant engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to provide Plaintiff and members of the Class with meal period premiums for each day they were not provided a compliant meal break;

xiv. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200;

xv. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members;

xvi. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in

1 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

2 d. Adequacy of Representation: Plaintiff is a member of the Class and will
3 fairly and adequately represent and protect the interests of the Class and Class Members.
4 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
5 Plaintiff is competent and experienced in litigating large wage and hour class actions, including
6 numerous cases virtually identical to this one (i.e., wage and hour class action cases), and other
7 employment class actions, and will devote sufficient time and resources to the case and otherwise
8 adequately represent the Class and Class Members.

9 e. Superiority of Class Action: A class action is superior to other available
10 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
11 Members is not practicable, and questions of law and fact common to the Class predominate over
12 any questions affecting only individual members of the Class. Each Class Member has been
13 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
14 practices. Certification of this case as a class action will allow those similarly situated persons to
15 litigate their claims in the manner that is most efficient and economical for the parties and the
16 judicial system. Certifying this case as a class action is superior because it allows for efficient and
17 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
18 compensation, and meal and rest break policies, and will thereby effectuate California's strong
19 public policy of protecting employees from deprivation or offsetting of compensation earned in
20 their employment. If this action is not certified as a Class Action, it will be impossible as a
21 practical matter, for many or most Class Members to bring individual actions to recover monies
22 unlawfully withheld from their lawful compensation due from Defendant's, due to the relatively
23 small amounts of such individual recoveries relative to the costs and burdens of litigation.

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **[Cal. Labor Code §§ 1194; 1194.2]**
On behalf of Plaintiff and the Class

27 54. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 in the preceding paragraphs.

1 55. The actionable period for this cause of action is three years prior to the filing of this
2 Complaint through the present, and on-going until the violations are corrected or the Class is
3 certified.

4 56. Section 1194 of the Labor Code provides, in relevant part:

5 Notwithstanding any agreement to work for a lesser wage, any employee
6 receiving less than minimum wage...applicable to the employee is entitled to
7 recover in a civil action the unpaid balance of the full amount of this
8 minimum wage ..., including interest thereon, reasonable attorney's fees, and
9 costs of suit.

10 57. Section 1194.2 of the Labor Code provides, in relevant part:

11 In any action under...Section 1194 to recover wages because of the payment
12 of a wage less than the minimum wage fixed by an order of the commission,
13 an employee shall be entitled to recover liquidated damages in an amount
14 equal to the wages unlawfully unpaid and interest thereon.

15 58. During the Class Period, Plaintiff and Class Members were not paid minimum
16 wages for time spent commuting to Defendant's projects on a daily basis in violation of Labor
17 Code § 1194. Accordingly, during the Class Period, Plaintiff and the members of the Class did not
18 receive minimum wages for all work time.

19 59. In failing to pay for all time worked, Plaintiff and the Class are entitled to recover,
20 either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in
21 an additional amount equal to the total amount of wages unlawfully withheld during the Class
22 Period for rest period time.

23 60. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also
24 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO PAY OVERTIME WAGES**
27 **[Cal. Labor Code § 510]**
28 **On behalf of Plaintiff and the Class**

 61. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
in the preceding paragraphs.

 62. The actionable period for this cause of action is three years prior to the filing of the
Complaint through the present, and on-going until the violations are correct or the Class is

1 certified.

2 63. Labor Code § 510 provides that any work in excess of eight hours on any day, as
3 well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at
4 the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order
5 No. 16.

6 64. Here, Defendant hired Plaintiff and the Class to work as maintenance technicians
7 and maintenance workers in California and to work on various of Defendant's projects. Plaintiff
8 and the Class often worked in excess of 8 hours and over 40 hours per week. On average, Plaintiff
9 and the Aggrieved Employees worked between 12 to 14 hours on a daily basis. Defendant only
10 paid Plaintiff and the Class the regular hourly rate per each project. Plaintiff and the Class did not
11 receive compensation for their commuting time. Plaintiff and the Class did not receive any
12 compensation for the hours that they worked beyond eight hours per day.

13 65. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 16,
14 Defendant did not pay Plaintiff and the Class any overtime wages corresponding to one and a half
15 time of Plaintiff and the Class' hourly rates of pay. Plaintiff and the Class often worked eight hours
16 per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing
17 to pay Plaintiff and the Class their overtime wages at the applicable overtime rates, including daily
18 overtime and weekly overtime, and instead merely paid Plaintiff and the Class straight time wages
19 for all hours worked.

20 **THIRD CAUSE OF ACTION**
21 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
22 **AND PAY MISSED REST BREAK PREMIUMS**
23 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 16]**
24 **On behalf of Plaintiff and the Class**

25 66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 67. The actionable period for this cause of action is three years prior to the filing of the
28 Complaint through the present, and on-going until the violations are corrected or the Class is
certified.

1 68. California Labor Code § 226.7(a) provides, “No employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of the Industrial
3 Welfare Commission.”

4 69. Section 12 of IWC Wage Order No. 16 provides: “(A) Every employer shall
5 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
6 middle of each work period. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
8 thereof. However, a rest period need not be authorized for employees whose total daily work time
9 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours*
10 *worked for which there shall be no deduction from wages.*” (emphasis added).

11 70. By failing to provide its maintenance workers , technician and other class members,
12 compliant rest periods of 10 minutes for each 4 hours of work, Defendant has violated California
13 Labor Code § 226.7, and is liable to Plaintiff and the Class.

14 71. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
15 provided compliant rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the
16 amount of one additional hour of pay at the employee’s regular rate of compensation for each work
17 period during each day in which Defendant failed to provide compliant rest periods as required by
18 California law.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
21 **TO PAY MISSED MEAL BREAK PREMIUMS**
22 **[Cal. Labor Code §§ 226.7, 512]**
23 **On behalf of Plaintiff and the Class**

24 72. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
25 in the preceding paragraphs.

26 73. The actionable period for this cause of action is three years prior to the filing of this
27 action through the present.

28 74. California Labor Code § 226.7(a) provides, “No employer shall require any
employee to work during any meal or rest period mandated by an applicable order of the Industrial

1 Welfare Commission.

2 75. Section 11(A) and (B) of IWC Wage Order No. 16 provide that:

3 “No employer shall employ any person for a work period of more than five (5)
4 hours without a meal period of not less than 30 minutes, except that when a
5 work period of not more than six (6) hours will complete the day’s work the
6 meal period may be waived by mutual consent of the employer and the
7 employee...An employer may not employ an employee for a work period of
8 more than ten (10) hours per day without providing the employee with a
9 second meal period of not less than 30 minutes, except that if the total hours
10 worked is no more than 12 hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal period
12 was not waived.

13 76. Section 11(C) of IWC Wage Order No. 16 provides that:

14 Unless the employee is relieved of all duty during a 30 minute meal period,
15 the meal period shall be considered an —on duty‡ meal period and counted as
16 time worked. An —on duty‡ meal period shall be permitted only when the
17 nature of the work prevents an employee from being relieved of all duty and
18 when by written agreement between the parties an on-the-job paid meal period
19 is agreed to. The written agreement shall state that the employee may, in
20 writing, revoke the agreement at any time.

21 77. Finally, Section 11(D) of IWC Wage Order No. 9 provides that:

22 If an employer fails to provide an employee a meal period in accordance with
23 the applicable provisions of this order, the employer shall pay the employee
24 one (1) hour of pay at the employee’s regular rate of compensation for each
25 workday that the meal period is not provided.

26 78. Here, by failing to provide them with duty-free timely 30-minute meal breaks, on
27 their shifts greater than 5 hours in length, Defendant has violated California Labor Code § 226.7
28 and IWC Wage Order No. 16, and is liable to Plaintiff and the Class.

79. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7
in the amount of one additional hour of pay at the employee’s regular rate of compensation for
each work period greater than 5 hours in California during each day in which Defendant failed to
provide timely duty-free meal periods as required by California law.

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]
On behalf of Plaintiff and the Wage Statement and Penalty Subclass

80. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

81. The actionable period for this cause of action is one year prior to the filing of this Complaint through the present, and on-going until the violations are connected or the subclass is certified.

82. Section 226(a) of the California Labor Code provides, in relevant part:

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

83. As set forth above, during the Class Period Defendant failed to issue wage statements to its maintenance workers or maintenance technicians in California, including Plaintiff, that complied with Labor Code Section 226(a). Defendant's "wage statements" were inadequate. Defendant's "wage statements" also did not include total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections 226(a).

84. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission"

1 even though it believed that employees paid solely on commission or commission and salary “are
2 exempt and therefore we do not record hours on a wage statement”).

3 85. As a result of Defendant’s issuance of inaccurate itemized wage statements to
4 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
5 who were employed by Defendant during the actionable period for this cause of action) in
6 violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to
7 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
8 an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendant
9 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES FOR**
12 **FAILURE TO PAY WAGES DUE ON TERMINATION**
13 **[Cal. Labor Code §§ 201-203]**
14 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass**

15 86. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 87. The actionable period for this cause of action is three years prior to the filing of the
18 Complaint through the present, and on-going until the violations are corrected or the subclass is
19 certified.

20 88. Sections 201 and 202 of the California Labor Code require Defendant to pay all
21 compensation due and owing to former maintenance workers and electrical contractors in the Class
22 during the actionable period for this cause of action, at or around the time that their employment is
23 terminated.

24 89. Section 203 of the California Labor Code provides that if an employer willfully
25 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
26 202, then the employer is liable for penalties in the form of continued compensation up to thirty
27 (30) workdays.

28 90. Defendant willfully failed to pay Plaintiff and other members of the waiting time
penalty Class (i.e., those members of the Class whose employment with Defendant ended the

1 actionable period for this cause of action) who are no longer employed by Defendant all minimum
2 wages owed prior to or upon termination or separation from employment with Defendant as
3 required by California Labor Code §§ 201 and 202, as well as overtime wages and meal and rest
4 break premiums.

5 91. As a result, Defendant is liable to Plaintiff and other members of the waiting time
6 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
7 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
8 Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
9 entitles an employee to recover waiting time penalties).

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
12 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Class

13 92. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 93. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
16 any employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
18 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
19 payroll if the wages are paid not more than seven calendar days following the close of the payroll
20 period.

21 94. Due to Defendant’s failure to pay Plaintiff and the other Class Members for
22 minimum wages, overtime wages, and meal and rest period premiums owed,² Defendant violated

23
24 ² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
25 time penalties under Labor Code § 203. See e.g. *In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
26 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
27 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
28 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
(N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor
Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be

(continued . . .)

1 Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll
2 period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist.
3 LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a
4 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

5 95. Labor Code § 210 provides that “in addition to, an entirely independent and apart
6 from, any other penalty provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
8 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
9 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
10 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
11 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
12 entitled to recover penalties under Labor Code § 210.

13 **EIGHTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION LAW VIOLATIONS**
15 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
16 **On Behalf of Plaintiff and the Class**

17 96. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 97. Section 17200 of the California Business & Professions Code prohibits any
20 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
21 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
22 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
23 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

24 98. Under section 17208 of the California Business and Professions Code, the statute of
25 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for

26 (continued ...)

27 considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
28 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme
Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 this cause of action is four years prior to the filing of this Complaint through the present, and on-
2 going until the violations are corrected or the Class is certified.

3 99. Section 90.5(a) of the Labor Code states that it is the public policy of California to
4 enforce vigorously minimum labor standards in order to ensure employees are not required to work
5 under substandard and unlawful conditions, and to protect employers who comply with the law
6 from those who attempt to gain competitive advantage at the expense of their workers by failing to
7 comply with minimum labor standards.

8 100. As a direct and proximate result of Defendant's unlawful business practices,
9 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its
10 unlawful, unfair, and/or fraudulent acts and practices.

11 101. Plaintiff and similarly situated Class Members are entitled to monetary relief
12 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, and unpaid
13 overtime, unpaid meal and rest period premiums, from at least four years prior to the filing of this
14 complaint through to the date of such restitution, at rates specified by law. Defendant should be
15 required to disgorge all the profits and gains it has reaped and restore such profits and gains to
16 Plaintiff and Class Members, from whom they were unlawfully taken.

17 102. Through its actions alleged herein, Defendant has engaged in unfair competition
18 within the meaning of section 17200 of the California Business & Professions Code, because
19 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
20 wrongfully denying them minimum wages, wrongfully denying them overtime, and wrongfully
21 denying them missed meal and rest period premiums, and therefore was substantially injurious to
22 Plaintiff and the Class Members.

23 103. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
24 the California Business & Professions Code by violating Section 1194 of the California Labor
25 Code, and Sections 11 and 12 of the IWC Wage Order No. 16.

26 104. Defendant's course of conduct, act and practice in violation of the California laws
27 mentioned above constitute independent violations of sections 17200 et seq. of the California
28 Business and Professions Code.

105. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

106. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

NINTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS
(Labor Code §§ 2698-2699.5; 558)
On Behalf of Plaintiff and the PAGA Subclass

107. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

108. Plaintiff and those members of the class who were employed by Defendant within the last year are, "aggrieved employees" under PAGA as they were employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 1194, 1194.2, 226, 226.7, 510, 512, 201-203, 204, and 210 of the Labor Code. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or around November 15, 2020. As such, they seek to recover, on behalf of themselves and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

109. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

1 These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to
2 the affected employees.

3 110. The aggrieved employees are all individuals who hold or held the title of
4 maintenance worker or maintenance technician, or in any other similar capacity, and who worked
5 for Defendant in California during the PAGA Period. These employees were subject to the
6 aforementioned Labor Code violations, during the period of time from one year prior to the
7 submission of Plaintiff's letter to the LDWA on November 15, 2020 through the present and on-
8 going.

9 111. In addition, as set forth above, Defendant failed to provide Plaintiff and all
10 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
11 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
12 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

16 112. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
17 Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing,
18 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
19 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all
20 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
21 above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
22 "for the purposes of recovering PAGA penalties, one need only prove a violation of Section
23 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S.
24 Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab.
25 Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

26 113. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
28 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff

1 may choose to seek certification of the PAGA claims.

2 114. Pursuant to Labor Code § 2699.3 (a), on November 15, 2020, Plaintiff gave written
3 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
4 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
5 Complaint. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the pursuit of his
6 PAGA claim on behalf of himself and all other current and former aggrieved employees of
7 Defendant as of January 21, 2021.

8 JURY DEMAND

9 115. Plaintiff hereby demand trial by jury of his and the Class’s claims against
10 Defendant, except for the PAGA UCL claims which shall be tried by the Court.

11 PRAYER FOR RELIEF

12 Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for judgment
13 against Defendant as follows:

14 1. An Order that this action may proceed and be maintained as a class action;

15 2. On the First Cause of Action:

16 a. A declaratory judgment that Defendant violated sections 1194 and 1194.2 of
17 the California Labor Code by failing to pay Plaintiff and other members of the Class all minimum
18 wages owed during the class period;

19 b. An award to Plaintiff and other members of the Class in the amount of their
20 unpaid wages owed to them, plus interest and/or liquidated damages during the class period;

21 c. An award to Plaintiff and the Class Members of their attorneys’ fees and
22 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
23 California Labor Code and section 1021.5 of the California Code of Civil Procedure;

24 3. On the Two Cause of Action:

25 a. A Declaratory judgment that Defendant has violated California Labor Code
26 § 510;

27 b. An award to Plaintiff and the other members of the Class in the amount of
28 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages

1 during the Class Period;

2 4. On the Third Cause of Action:

3 a. A declaratory judgment that Defendant has violated California Labor Code
4 § 226.7, and Section 12 of IWC Wage Order No. 16-2001;

5 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
6 Members for an hour of pay for each day that a compliant rest period was not provided during the
7 Class Period;

8 5. On the Fourth Cause of Action:

9 a. A declaratory judgment that Defendant has violated California Labor Code
10 §§ 226.7, 510, and Section 11 of IWC Wage Order No. 16-2001;

11 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
12 Members for an hour of pay for each day that a compliant meal period was not provided during the
13 Class Period;

14 6. On the Fifth Cause of Action:

15 a. A declaratory judgment that Defendant violated California Labor Code §226
16 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked
17 and all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate to Plaintiff and the wage statement and penalty subclass
19 members;

20 b. An award to Plaintiff and Class Members of \$50 for each initial pay period
21 in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a
22 violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as
23 an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

24 9. On the Sixth Cause of Action:

25 a. A declaratory judgment that Defendant violated California Labor Code
26 §§201 through 203;

27 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
28 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'

1 wages per waiting time penalty subclass Class Member.

2 10. On the Seventh Cause of Action:

- 3 a. A declaratory judgment that Defendant violated California Labor Code §§
4 204 and 210;
- 5 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class
6 for penalties pursuant to Labor Code § 210.

7 11. On the Eighth Cause of Action:

- 8 a. That the Court find and declare that Defendants have violated the UCL and
9 committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members all
10 minimum wages owed, by failing to pay overtime, and by failing to pay missed meal and rest
11 break premiums;
- 12 b. Restitution, including, but not limited to, the relief permitted by sections
13 1194 of the California Labor Code (i.e., unpaid minimum wages owed to Plaintiff and the
14 members of the Class during the Class Period);

15 12. On the Ninth Cause of Action:

- 16 a. A civil penalty against Defendant in the amount of \$100 for the initial
17 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
18 California Labor Code for Plaintiff and for member of the Wage Statement and PAGA Aggrieved
19 Employees during all of the pay periods in the one year preceding the submission of Plaintiff's
20 LWDA letter through the present and on-going until the violations are corrected or this subclass is
21 certified;
- 22 b. An award of reasonable attorney's fees against Defendant as specified in
23 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
24 with the PAGA claims;
- 25 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
26 connection with Plaintiff's and the Aggrieved Employees' PAGA claim against Defendant, as
27 provided for in Labor Code § 2699(g)(1);

28 ///

1 13. All other relief as this Court deems proper.
2

3 Dated: January 26, 2021

Respectfully,

4 ACKERMANN & TILAJEF, P.C.
5 EMPLOYMENT RIGHTS LAW GROUP, APC

6
7 By:



Craig Ackermann, Esq.

8 Amir Seyedfarshi, Esq.

9 Counsel for Plaintiff, the Class, and the
10 Aggrieved Employees

EXHIBIT A

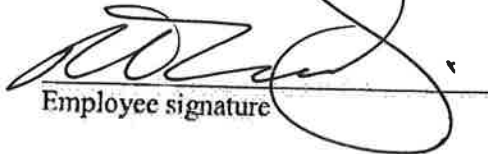
On-Duty Meal Period Agreement

I, RICHARD THOMAS, understand and agree that the nature of my work as a Service Engineer / Service Technician for Delta Tech Service, Inc. (the "Company"), could potentially, depending on the circumstances of any particular work shift, prevent me from being relieved of all duties and require me to remain on-duty during meal periods.

I understand that any on-duty meal period is to be recorded on my time card as time worked and will be paid accordingly. I understand that, by signing this on-duty meal period agreement, the Company will not owe me any premium pay (see California Labor Code Section 226.7).

I understand that I may revoke this agreement at any time by providing written notice in advance to my supervisor. I also understand that I may work on-duty meal periods after revoking this agreement by signing a new on-duty meal period agreement. This agreement will remain in effect until you or the Company exercises the option to revoke this agreement.

I acknowledge that I have read this agreement, understand it, and have had an opportunity to ask any questions that I may have. I freely and voluntarily enter into this agreement.


Employee signature

2/7/19
Date

RICHARD THOMAS
Print employee's name

DELTA TECH SERVICE, INC.


signature

2/7/19
Date

Curt Johnson President
Print name Title