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November 12, 2020

VIA CERTIFIED MAIL AND SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE FORM

Human Resources
Blue Pacific Engineering Construction, Inc.
7330 Opportunity Rd., Ste. A
San Diego, CA 92111

Blue Pacific Engineering Construction, Inc.
c/o Shahram Elihu
7330 Opportunity Rd., Ste. A
San Diego, CA 92111

Human Resources
Palm Engineering Construction Company, Inc.
7330 Opportunity Rd., Ste. A
San Diego, CA 92111

Palm Engineering Construction Company, Inc.
c/o Rasoul Shahbazi
7330 Opportunity Rd., Ste. A
San Diego, CA 92111

Human Resources
Shahram Elihu dba Blue Pacific Engineering &
Construction
7330 Opportunity Rd., Ste. A
San Diego, CA 92111

Re: Lisa Allen v. Blue Pacific Engineering Construction, Inc., et al.
California Labor Code § 2699.3 Notice of Intent to File PAGA Representative Action

To whom it may concern:

This office represents Lisa Allen ("Plaintiff") and similarly-situated employees in a class action (the "Action") filed against Blue Pacific Engineering Construction, Inc., and Shahram Elihu dba Blue Pacific Engineering & Construction, and Palm Engineering Construction Company, Inc. (collectively "Defendants") in a civil action entitled *Allen v. Blue Pacific Engineering Construction, Inc., et al.* currently pending in San Diego County Superior Court. A true and correct copy of the complaint filed in the Action is enclosed herein as **Exhibit A**.

This letter serves as notice pursuant to Labor Code § 2699.3, *et seq.* that we intend to amend the Action to include representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of the aggrieved employees defined as:

All individuals who are or were employed as hourly non-exempt employees by Defendants in California from one year prior to the mailing of this notice through

November 12, 2020

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the date of trial (the “Aggrieved Employees”)

As set forth in more detail in the Complaint, Defendants violated their obligations under California law by failing to pay minimum wages for all hours worked, failing to pay prevailing wages, failing to pay overtime wages and/or pay overtime wages at the correct rate, failing to provide lawful rest periods and pay missed rest period premiums, failing to provide lawful meal periods and pay meal period premiums, failing to maintain accurate records, failing to reimburse business expenses, failing to provide accurate and complete wage statements, failing to timely pay wages, and failing to provide all wages due upon termination to the putative Class, as defined in the Complaint, and to the Aggrieved Employees.

Because of these systemic violations, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, and 2802. The enclosed Complaint further details (1) the alleged violations, (2) the facts and theories supporting these violations, (3) the people and entities, dates, classifications, violations, events, and actions at issue, and (4) the illegal practices instituted on a class-wide basis by Defendants.

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to the Private Attorney General Act of 2004 (“PAGA”). See Cal. Lab. Code §§ 2695, *et seq.* We intend to fully prosecute the class and representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me at the information provided above.

Very truly yours,

Martin Sullivan

Martin Sullivan, Esq.
of Melmed Law Group P.C.

Enclosure

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EXHIBIT A

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Attorneys for Plaintiff and the Aggrieved Employees

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Superior Court of California,
County of San Diego
11/09/2020 at 01:28:57 PM
Clerk of the Superior Court
By Megan Dietenhofer, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LISA ALLEN, an individual, on behalf of the
State of California, as a private attorney
general, and on behalf of all other Aggrieved
Employees,

Plaintiff,

v.

BLUE PACIFIC ENGINEERING
CONSTRUCTION, INC., a California
Corporation, SHAHRAM ELIHU dba
BLUE PACIFIC ENGINEERING
& CONSTRUCTION, a business of
unknown formation, PALM
ENGINEERING CONSTRUCTION
COMPANY, INC., a California
Corporation, and DOES 1-20, inclusive,

Defendants.

CASE NO.: 37-2020-00040867-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY MINIMUM AND PREVAILING WAGES (LABOR CODE §§ 1194, 1194.2, 1197, 1771, 1774; IWC WAGE ORDER);
2. FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 510, 1197, 1198; IWC WAGE ORDER);
3. FAILURE TO PROVIDE COMPLIANT REST PERIODS AND/OR PAY MISSED REST PERIOD PREMIUMS (LABOR CODE § 226.7; IWC WAGE ORDER);
4. FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR PAY MEAL PERIOD PREMIUMS (LABOR CODE §§ 512, 226.7; IWC WAGE ORDER)
5. FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
6. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS (LABOR CODE §§ 226);
7. WAITING TIME PENALTIES (LABOR CODE § 201-203);
8. FAILURE TO PAY TIMELY WAGES (LABOR CODE § 204); and
9. UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204);

DEMAND FOR JURY TRIAL

1 Plaintiff LISA ALLEN (“Plaintiff”), on behalf of herself and all others similarly situated,
2 complains and alleges of Defendants BLUE PACIFIC ENGINEERING CONSTRUCTION, INC.,
3 SHAHRAM ELIHU dba BLUE PACIFIC ENGINEERING & CONSTRUCTION, PALM
4 ENGINEERING CONSTRUCTION COMPANY, INC., and DOES 1 through 20 (referred to
5 collectively as “Defendants”), as follows.

6 **I. INTRODUCTION**

7 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
8 on behalf of Plaintiff and all other current and former similarly situated employees employed by
9 Defendants within the State of California.

10 2. Through this class action, Plaintiff seeks to represent the following Class Members:
11 *All individuals who are or were employed by Defendants in California as a non-exempt employee*
12 *from four years prior to the filing of this Complaint through the date of trial* (the “Class
13 Members”).

14 3. The “Class Period” as used herein, is defined as the period from four years prior to
15 the filing of this Complaint and continuing into the present and ongoing.

16 4. From at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendants have had a consistent policy of failing to pay Class Members for all hours
18 worked, failing to pay prevailing wages, failing to pay overtime wages, failing to authorize or
19 permit compliant rest periods, failing to pay missed rest period premiums, failing to provide
20 compliant meal periods, failing to pay missed meal period premiums, failing to reimburse business
21 expenses, failing to maintain employment records, failing to issue accurate/complete wage
22 statements, failing to pay timely wages, and failing to pay all wages due upon termination and/or
23 resignation from employment.

24 5. Plaintiff further brings this action on behalf of herself and all other similarly situated
25 employees, pursuant to California Business and Professions Code sections 17200 through 17208.

26
27 **II. JURISDICTION AND VENUE**

28 6. This Court has subject matter jurisdiction over all causes of action asserted herein

1 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
2 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
3 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises
4 under the law of the State of California or is subject to adjudication in the courts of the State of
5 California.

6 7. This Court has personal jurisdiction over Defendants because each has caused
7 injuries in San Diego County and the State of California through their acts, and by their violation of
8 the California Labor Code, California state common law, and California Business & Professions
9 Code sections 17200, *et seq.* Defendants also transact business throughout California and has
10 obtained the benefits of law of the United States and the State of California and are therefore
11 subject to the personal jurisdiction of this Court.

12 8. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
13 Procedure § 395(a). Defendants operate within California and do business within San Diego
14 County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Class Members
15 within the State of California and San Diego County.

16 9. This case should be classified as complex according to California Rules of Court,
17 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
18 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
19 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
20 and would require substantial post judgment judicial supervision.

21 **III. PARTIES**

22 10. Plaintiff Lisa Allen is a resident of California and was employed by Defendants
23 during the Class Period as a non-exempt employee in San Diego County, California.

24 11. Plaintiff seeks to represent the Classes, as defined herein.

25 12. Plaintiff is informed and believes and thereon alleges that Defendant Blue Pacific
26 Engineering Construction, Inc. is a California corporation authorized to and doing business in San
27 Diego County, California, and is and/or was the legal employer of Plaintiff and the Class Members
28 during the applicable statutory periods.

1 13. Plaintiff is informed and believes and thereon alleges that Defendant Shahram Elihu
2 dba Blue Pacific Engineering & Construction is authorized to and doing business in San Diego
3 County, California, and is and/or was the legal employer of Plaintiff and the Class Members during
4 the applicable statutory periods.

5 14. Plaintiff is informed and believes and thereon alleges that Defendant Palm
6 Engineering Construction Company, Inc. is a California corporation authorized to and doing
7 business in San Diego County, California, and is and/or was the legal employer of Plaintiff and the
8 Class Members during the applicable statutory periods.

9 15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
10 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
11 inclusive, but on information and belief allege that those Defendants are legally responsible for the
12 payment of wages and penalties and damages to Plaintiff and all Class Members by virtue of
13 Defendants' unlawful actions and practices and therefore sues these Defendants by such fictitious
14 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
15 Defendants when ascertained.

16 16. Plaintiff alleges that at all relevant times herein the Defendants sued herein as DOES
17 1-20 had the authority, in the interest of certain Defendants, to exercise independent judgment to
18 hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Plaintiff,
19 and were in Plaintiff's chain of command at the time of and direct participants in the wrongful
20 conduct which constitutes the basis of Plaintiff's complaint herein. Plaintiff also alleges that the
21 Defendants sued herein as DOES 1-20 and certain Defendants are the agents, servants, employees,
22 partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned,
23 acting within the course, scope, and purpose of such relationship(s) and with the knowledge,
24 consent and/or ratification of each other. Furthermore, in conducting themselves in the manner
25 described herein, the Defendants sued herein as DOES 1-20 and certain Defendants were acting in
26 active concert with on another such that the acts of each were fully attributable to the other in all
27 material respects. Plaintiff also alleges that certain Defendants were merely the alter ego of the
28 Defendants sued herein as DOES 1-20 in that there existed a unity of interest and ownership such

1 that any separateness between them ceased to exist and the Defendants sued herein as DOES 1-20
2 exercised undue dominance, control, influence, and management over certain Defendants. Plaintiff
3 further alleges that, at all relevant times, certain Defendants have been inadequately capitalized to
4 conduct business, have failed to follow appropriate corporate formalities, and have simply been a
5 shell and instrumentality through which the Defendants sued herein as DOES 1-20 have conducted
6 their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached
7 to certain Defendants should be imposed jointly and severally against the Defendants sued herein as
8 DOES 1-20. Adherence to the fiction of the separate existence of these corporate entities would
9 permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

10 **IV. SUMMARY OF FACTS**

11 17. Labor Code § 1197 states the California requirement that employees must be paid at
12 least the minimum wage fixed by the Commission, and any payment of less than the minimum
13 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal
14 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
15 wage.”

16 18. These minimum wage standards apply to each hour employees worked for which
17 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
18 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
19 or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005)
20 135 Cal.App.4th 314, 324.

21 19. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
22 damages for violations of Labor Code § 1194. Where an employee, such as Claimant, was not paid
23 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the
24 time associated with the time for which they received no compensation. See *Sillah v. Command*
25 *Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to
26 pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid
27 less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016)
28 2016 U.S. Dist. LEXIS 172319, at *20-21.

1 20. Defendants failed and fail to pay Plaintiff and the Class Members the requisite
2 prevailing wage rates for work they do on public works projects where Defendants were obligated
3 to pay prevailing wages.

4 21. Defendants service various public agencies pursuant to contracts, which are paid by
5 public funds. For such public work projects, Defendant's employees, including Plaintiff and the
6 Class Members, are and were entitled to prevailing wages for all of their hours worked. Cal. Lab.
7 Code §§ 1771, 1774. The Department of Industrial Relations ("DIR") construes "hours worked" as
8 "the time during which an employee is subject to the control of an employer and includes all the
9 time the employee is suffered or permitted to work, whether or not required to do so." *In the Matter*
10 *of Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH.

11 22. Despite this clear mandate, Defendants failed to pay Plaintiff and the Class Members
12 prevailing wages for all "hours worked" on public work projects. Instead, Defendants at times paid
13 them the rate they would receive from non-public works projects or at a rate lower than the
14 mandated prevailing wage.

15 23. Labor Code § 510 requires an employer to compensate an employee who works
16 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
17 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
18 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
19 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
20 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
21 Code § 1194, Plaintiff and the Class Members could not then agree and cannot now agree to work
22 for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194. Further, the
23 applicable IWC Wage Order provides that "employees shall not be employed more than eight (8)
24 hours in any workday or more than 40 in a workweek unless the employee receives one and one
25 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
26 workweek."

27 24. Due to Defendants paying an unlawful base hourly wage (i.e., at a rate lower than
28 the requisite prevailing wage), the overtime wages earned by Plaintiff and the Class Members are

1 not calculated properly. Specifically, the overtime rates should have been calculated at 1.5 times
2 the prevailing wage regular rate, and not at 1.5 times the unlawful rate actually paid.

3 25. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
4 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
5 applicable regulation, standard, or order of the Industrial Welfare Commission ...”

6 26. Pursuant to Labor Code § 226.7, and the applicable IWC Wage Order, Defendants
7 failed to provide Plaintiff and the Class Members with compensated, duty-free rest periods of not
8 less than ten (10) minutes for every major fraction of four hours worked.

9 27. The applicable IWC Wage Order states in pertinent part: “Every employer shall
10 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
11 middle of each work period. The authorized rest period time shall be based on the total hours
12 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
13 thereof.”

14 28. Here, Plaintiff and the Class Members were not provided with legally complaint and
15 timely rest periods of at least ten (10) ten minutes for each four (4) hour work period, or major
16 fraction thereof due to Defendants’ unlawful rest period policies/practices.

17 29. In addition to failing to authorize and permit compliant rest periods, Plaintiff and the
18 Class Members were not compensated with one (1) hour’s worth of pay at their regular rate of
19 compensation when they were not provided with a compliant rest period in accordance with Labor
20 Code § 226.7(b) and the applicable IWC Wage Order.

21 30. Under California Labor Code Section 512 and the applicable IWC Wage Order, no
22 employer shall employ any person for a work period of more than five (5) hours without providing
23 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
24 (30) minutes, the employee is to be completely free of the employer’s control and must not perform
25 any work for the employer. If the employee does perform work for the employer during the thirty
26 (30) minute meal period, the employee has not been provided a meal period in accordance with the
27 law. Also, the employee is to be compensated for any work performed during the thirty (30) minute
28 meal period. Finally, an employer may not employ an employee for a work period of more than ten

1 (10) hours a day without providing the employee with another meal period of not less than thirty
2 (30) minutes.

3 31. Plaintiff and the Class Members were denied legally complaint and timely off-duty
4 meal periods of at least thirty (30) minutes due to Defendants' unlawful meal period
5 policy/practices. As a result of Defendants' uniform meal period policies and practices, Plaintiff
6 and the Class Members routinely were not permitted to take complaint first meal periods before the
7 end of the fifth hour of work, and second meal periods before the end of the tenth hour of work.
8 Plaintiff and the Class Members were also not permitted to take second meal periods for shifts in
9 excess of ten (10) hours.

10 32. Under California Labor Code Section 226.7, if the employer does not provide an
11 employee a meal period in accordance with these requirements, the employer shall pay the
12 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
13 the meal period is not provided. Here, Despite the fact that its Plaintiff and the Class Members
14 were never provided timely 30-minute duty-free meal periods, on or before the fifth and tenth hours
15 of time shifts, Defendants never paid any missed meal period premiums to Plaintiff and the Class
16 Members.

17 33. Pursuant to Labor Code § 2802, "[a]n employer shall indemnify his or her employee
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of the employer..." and
20 pursuant to Labor Code 2802(c) "[f]or purposes of this section, the term "necessary expenditures or
21 losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by
22 the employee enforcing the rights granted by this section."

23 34. Defendants required and continue to require Plaintiff and the Class Members to use
24 their personal vehicles for work purposes. For example, Plaintiff and the Class Members were
25 required to use their personal vehicles to drive to various stores to purchase supplies for work
26 purposes. Although Plaintiff and the Class Members used their personal vehicles for necessary
27 work-related purposes to perform their job duties with the knowledge of and/or acquiescence of
28 Defendants, Defendants did not reimburse Plaintiff and the Class Members in any amount for any

1 such expenses incurred throughout the Class Period. Defendants' failure to reimburse Plaintiff and
2 the Class Members for their on-going business expenses incurred in their discharge of their duties
3 continues through the present day.

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

14 36. Here, based on Defendants' failure provide employees with lawful off-duty meal and
15 rest periods and pay meal and rest period premiums, and failure to pay all minimum, prevailing,
16 and overtime wages at the proper rates for all hours worked, the wage statements did not indicate
17 correct amount of gross wages earned, the correct number of hours worked, the correct total hours
18 worked, the correct net wages earned, in violation of Labor Code Section 226(a) (1, 2, 5, and 9).
19 Further, the itemized wage statements provided to Plaintiff and the Class Members do not include
20 the correct name and address of the legal entity that is the employer, in violation of Labor Code §
21 226(a)(8).

22 37. In addition to violating Labor Code § 226(a), Defendants also knowingly and
23 intentionally failed to provide Plaintiff and the Class Members with accurate itemized wage
24 statements in violation of Labor Code § 226(e). Defendants undeniably knew that it was not
25 providing Plaintiff and the Class Members with wage statements required by California law. *See*
26 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
27 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
28 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 38. Labor Code section 1174 states, “[e]very person employing labor in this state shall...
4 [k]eep, at a central location in the state or at the plants or establishments at which employees are
5 employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees
6 employed at the respective plants or establishments.”

7 39. The “Records” section of the applicable IWC Wage Order states that every employer
8 shall keep accurate information with respect to each one of its employees, including time records
9 showing when the employee begins and ends each work period and meal period, total hours worked
10 in the payroll period and applicable rates of pay, and total wages paid each payroll period.

11 40. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure
12 to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
13 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code
14 section 2699 for a violation of Labor Code section 1174(d).

15 41. As set forth above, Defendants violated these requirements by failing to accurately
16 record employee hours worked including, but not limited to, Defendants’ failure to record the
17 proper beginning and end of each work period and each meal period taken, the applicable rates of
18 pay, and the wages paid.

19 42. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
20 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
21 Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a
22 definite period quits his or her employment, his or her wages shall become due and payable not
23 later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”
25 Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in
26 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
27 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
28 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not

1 continue for more than 30 days.”

2 43. Here, Defendants failed to pay Plaintiff and the Class Members all wages that were
3 due and owing (all minimum, prevailing, and overtime wages owed at the proper rates, all meal and
4 rest period premiums owed, etc.) within the required time following the end of their employment in
5 accordance with Labor Code §§ 201-202. As a result, all such Class Members are entitled to 30
6 days of wages as a “waiting time penalty.”

7 44. Labor Code § 204 expressly requires employers who pay employees on a weekly,
8 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
9 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff and the Class Members
10 all minimum and overtime wage compensation, and meal and rest period premiums as described
11 above, Defendants failed to timely pay its employees within seven calendar days following the
12 close of payroll in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson*
13 *v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal.
14 May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure to pay rest period
15 premiums can support claims under Labor Code §§ 203 and 204).

16 45. Labor Code § 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
20 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
21 failure to pay each employee, plus 25% of the amount unlawfully withheld.”

22 **V. CLASS ACTION ALLEGATIONS**

23 46. Plaintiff brings this action on behalf of herself and all others similarly situated as a
24 class action pursuant to Code of Civil Procedure § 382. Plaintiff also seeks to represent the
25 following Classes:

26 ///

27 **The Class:** *All individuals who are or were employed by Defendants in California as a non-*
28 *exempt employee from four years prior to the filing of this Complaint through the date of*
trial (the “Class Members”)

1 **The Waiting Time Penalty Subclass:** *all Class Members whose employment with*
2 *Defendants ended from three years prior to the filing of this complaint through the date of*
3 *trial.*

4 47. Plaintiff reserves the right to amend or modify the class descriptions with greater
5 specificity or further division into subclasses or limitation to particular issues as appropriate.

6 48. Plaintiff, as Class Representative, is a member of the Classes that she seeks to
7 represent.

8 49. This action has been brought and may properly be maintained as a class action under
9 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
10 litigation and the proposed Class is easily ascertainable from Defendants' personnel and payroll
11 records.

12 50. **Numerosity:** The potential members of the Class as defined are so numerous that a
13 joinder of all Class Members is impracticable. Although the exact number is currently unknown to
14 Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

15 51. **Commonality:** There are questions of law and fact common to the class which
16 predominate over any questions affecting only individual members of the Class, including without
17 limitation:

18 i. Whether Defendants violated the California Labor Code and the applicable
19 IWC Wage Order by failing to pay minimum and prevailing wages to Plaintiff and the Class for all
20 hours worked;

21 ii. Whether Defendants violated the California Labor Code and the applicable
22 IWC Wage Order by failing to overtime wages to Plaintiff and the Class for all overtime hours
23 worked;

24 iii. Whether Defendants violated the California Labor Code and the applicable
25 IWC Wage Order by failing to overtime wages at the correct rate to Plaintiff and the Class for all
26 overtime hours worked;

27 iv. Whether Defendants violated the California Labor Code and the applicable
28 IWC Wage Order by failing to provide compliant rest periods to Plaintiff and the Class and whether

1 Defendants failed to compensate Plaintiff and the Class with one additional hour of premium pay
2 for each instance when a compliant rest period was not provided;

3 v. Whether Defendants violated the California Labor Code and the applicable
4 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Class and
5 whether Defendants failed to compensate Plaintiff and the Class with one additional hour of
6 premium pay for each instance when a compliant meal period was not provided;

7 vi. Whether Defendants violated the California Labor Code by failing to
8 reimburse Plaintiff and the Class Members for the cost of using their personal vehicles for work-
9 related purposes;

10 vii. Whether Defendants violated the California Labor Code by failing to pay all
11 wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time
12 Penalty Subclass, whether such separation was voluntary or involuntary;

13 viii. Whether Defendants violated the California Labor Code by failing to pay
14 timely wages to the Class;

15 ix. Whether Defendants violated the California Labor Code by failing to provide
16 Plaintiff and the Class with complete, accurate, itemized wage statements;

17 x. Whether Defendants violated California Business & Professions Code §§
18 17200 *et seq.* due to the: failure to pay minimum and prevailing wages; failure to pay overtime
19 wages, failure to authorize or permit mandated paid rest periods; failure to provide missed rest
20 period premiums; failure to provide compliant meal periods; failure to pay missed meal period
21 premiums; failure to reimburse for business expenses; and failure to timely pay final wages;

22 xi. Whether Defendants violated § 17200 *et seq.* of the California Business and
23 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 210, 226,
24 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 1771, 1774, 2802, among possibly other sections
25 inadvertently omitted, and the IWC Wage Order, which violations constitute false, fraudulent,
26 unlawful, unfair and deceptive business practices; and

27 xii. Whether Plaintiff and the Class are entitled to equitable relief pursuant to
28 California Business & Professions Code §§ 17200, *et seq.*

1 paragraphs above, as though fully set forth herein.

2 56. Plaintiff and the Class Members are and/or were not exempt from the requirement to
3 be paid at least the applicable California minimum wage throughout the statutory period for each
4 hour worked.

5 57. Defendants violated California Labor Code laws and minimum and prevailing wage
6 laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197, 1771, 1774, and the IWC Wage Order.

7 58. Defendants failed and fail to pay Plaintiff and the Class Members the requisite
8 prevailing wage rates for work they do on public works projects where Defendants were obligated
9 to pay prevailing wages.

10 59. Defendants service various public agencies pursuant to contracts, which are paid by
11 public funds. For such public work projects, Defendant's employees, including Plaintiff and the
12 Class Members, are and were entitled to prevailing wages for all of their hours worked. Cal. Lab.
13 Code §§ 1771, 1774. The Department of Industrial Relations ("DIR") construes "hours worked" as
14 "the time during which an employee is subject to the control of an employer and includes all the
15 time the employee is suffered or permitted to work, whether or not required to do so." *In the Matter*
16 *of Kern Asphalt Paving & Sealing Co., Inc.* (March 28, 2008), Case No. 04-0117-PWH.

17 60. Despite this clear mandate, during the PAGA Covered Period, Defendants failed to
18 pay Plaintiff and the Class Members prevailing wages for all "hours worked" on public work
19 projects. Instead, Defendants at times paid them the rate they would receive from non-public works
20 projects or at a rate lower than the mandated prevailing wage

21 61. Plaintiff is informed and believes and thereon alleged that Defendants intentionally,
22 willfully, and improperly failed to pay wages to Plaintiff and Class Members.

23 62. Defendants' conduct was willful, as Defendants knew that Plaintiff and Class
24 Members were entitled to be paid wages throughout the statutory period for each hour worked,
25 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

26 63. As a result of Defendants' wrongful conduct, Plaintiff and the Class Members have
27 been damages in amounts to be proven at trial.

28 64. Plaintiff, on behalf of herself and the Class seeks recovery of all unpaid minimum

1 wages, prevailing wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit,
2 pursuant to Labor Code §§ 1194, 1194.2, 1197, 1771, 1774 against Defendants in an amount to be
3 proven at trial.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 [Labor Code §§ 510, 1197, 1198; IWC Wage Order]
Plaintiff and Class Members Against All Defendants

7 65. Plaintiff re-alleges and incorporates by reference the allegations contained in the
8 paragraphs above, as though fully set forth herein.

9 66. Labor Code § 510 requires an employer to compensate an employee who works
10 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
11 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
12 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
13 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
14 day or more than eight (8) hours on the seventh consecutive day of work.

15 67. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
16 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
17 standard conditions of labor for employees. The employment of any employee for longer hours than
18 those fixed by the order or under conditions of labor prohibited by the order is unlawful."

19 68. At all times relevant herein, Defendants were required to properly pay Plaintiff and
20 members of the Class for all overtime wages earned pursuant to California Labor Code § 1194 and
21 applicable Wage Orders. Section 3 of the applicable Wage Orders require an employer to pay an
22 employee "one and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of
23 eight (8) hours per workday and/or in excess of 40 hours of work in the workweek. The same
24 section also requires an employer to pay an employee double the employee's regular rate of pay for
25 work in excess of twelve hours each workday and/or for work in excess of eight (8) hours on the
26 seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the Class
27 Members to work overtime hours but did not compensate Plaintiff and the Class Members at one
28 and one-half times their regular rate of pay for such hours in accordance with California law.

69. Plaintiff and the Class Members suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

70. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

[Labor Code § 226.7; IWC Wage Order]

Plaintiff and the Class Members Against All Defendants

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

72. Plaintiff and Class Members are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest periods.

73. Labor Code § 226.7 requires employers, including Defendants, to provide rest periods to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

74. The applicable IWC Wage Order states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

75. Pursuant to Labor Code § 226.7(b) and the IWC Wage Order, Defendants shall pay Plaintiff and Class Members one additional hour of pay at their regular rate of compensation for each day that the rest period is not provided.

76. Here, Defendants failed to authorize or permit Plaintiff and the Class Members to take duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Specifically, Defendants failed to have any lawful rest period policy in place that

1 informed Plaintiff and the Class Members of their right to take off duty rest periods for shifts that
2 were a major fraction of a four (4) hour work period and to make off-duty rest breaks available to
3 these employees.

4 77. In addition, Plaintiff and the Class Members were not compensated with one (1)
5 hours' worth of pay at their regular rate of compensation when they were not provided with a
6 compliant rest period

7 78. By their failure to provide Plaintiff and Class Members with rest periods as required
8 by California law, and failing to pay one hour of additional wages in lieu of each rest break not
9 provided, Defendants willfully violated Labor Code §§ 226.7 and the applicable IWC Wage Order.
10 Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate
11 of compensation for each work day that a paid rest break was not lawfully provided in an amount to
12 be proven at time of trial.

13 79. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
14 applicable IWC Wage Order, Defendants, and each of them, are liable to Plaintiff and Class
15 Members for unpaid wage premiums, penalties, costs, and interest.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS**

18 [Labor Code §§ 226.7, 512; IWC Wage Order]

19 *On Behalf of Plaintiff and the Class Against All Defendants*

20 80. Plaintiff re-alleges and incorporates by reference the allegations contained in the
21 paragraphs above, as though fully set forth herein.

22 81. Plaintiff and the Class Members are and/or were "non-exempt" employees of
23 Defendants who did not receive proper protections and benefits of the laws governing mandatory
24 meal periods.

25 82. Labor Code § 512(a), in part, provides that employers, including Defendants, may
26 not employ an employee for a work period of more than five hours per day without providing an
27 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
28 that if the total work period per day of the employee is no more than six hours, the meal period may
be waived by mutual consent of both the employer and the employee. Employers may not employ

1 an employee for a work period more than 10 hours per day without providing the employee with a
2 second meal period of not less than 30 minutes.

3 83. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order, Defendants
4 shall pay an employee one additional hour of pay at the employee's regular rate of compensation
5 for each meal period that is missed.

6 84. At all relevant times herein, Plaintiff and the Class Members were denied the 30-
7 minute off-duty meal periods to which they were entitled.

8 85. Defendants failed to provide Plaintiff and the Class Members with all required meal
9 periods in accordance with the mandates of the California Labor Code and applicable Wage Orders,
10 for the reasons set forth herein above.

11 86. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
12 every pay period with respect to Plaintiff and the Class Members because Plaintiff and the Class
13 Members were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff
14 and the Class Members one additional hour of compensation in lieu thereof.

15 87. On information and belief, Plaintiff and the Class Members did not voluntarily or
16 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from
17 Plaintiff and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
18 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
19 permit or authorize Plaintiff and the Class Members to take meal periods in accordance with
20 California law.

21 88. By their failure to provide Plaintiff and the Class Members with meal periods as
22 required by California law, and failing to pay one hour of additional wages in lieu of each meal
23 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
24 Order. Accordingly, Defendants are liable for one hour of additional wages at the employee's
25 regular rate of compensation for each work day that a meal period was not lawfully provided in an
26 amount to be proven at time of trial.

27 89. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
28 and IWC Wage Order, Defendants, and each of them, are liable to Plaintiff and the Class Members

1 for unpaid wage premiums, penalties, costs, and interest.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

4 [Labor Code § 2802]

5 *Plaintiff and the Class Members Against All Defendants*

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

8 91. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties.” “Necessary” business expenses is defined to include all
11 “reasonable expenses.” See, Labor Code § 2802 (c).

12 92. It was necessary for Plaintiff and the Class Members to incur various expenses are
13 outlined herein above in the discharge of their job duties. Although Plaintiff and the Class Members
14 incurred these expenses at the direction of Defendants and/or in the direct discharge of their job
15 duties, Defendants did not reimburse these employees for such necessary work expenditures during
16 the four years preceding the filing of the Complaint.

17 93. Plaintiff and Class Members are entitled to reimbursement for these necessary
18 expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802.

19 94. As a result of Defendants’ violations of Labor Code § 2802, Defendants are also
20 liable for attorneys’ fees and costs under Labor Code § 2802(c).

21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

23 [Labor Code §§ 226]

24 *Plaintiff and the Class Against All Defendants*

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

27 96. The actionable period for this cause of action is one year prior to the filing of this
28 Complaint through the present, and on-going until the violations are corrected, or the class is
certified.

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

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

10 98. As set forth above, during the Class Period, Defendants issued and continue to issue
11 wage statements to its employees including Plaintiff and the Class which are inadequate under
12 Labor Code Section 226(a). Here, by failing to pay Plaintiff and Class Members for lawful off-duty
13 rest periods and pay rest period premiums, failing to provide compliant meal periods and pay meal
14 period premiums, failing to pay all minimum, prevailing, and overtime wages for all hours worked,
15 Defendants failed to include required information on Plaintiff and the Class' wage statements,
16 including the gross wages earned, the total hours worked, the net wages earned, and all applicable
17 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
18 hourly rate in violation of Labor Code section 226(a)(1, 2, 5 and 9). Further, the itemized wage
19 statements provided to Plaintiff and the Class Members do not include the correct name and address
20 of the legal entity that is the employer, in violation of Labor Code § 226(a)(8).

21 99. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
22 and intentional.

23 100. As a result of Defendants' issuance of inaccurate itemized wage statements to
24 Plaintiff and Class Members in violation of section 226(a) of the California Labor Code, Plaintiff
25 and the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of
26 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
27 member of the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and
28 reasonable attorney's fees.

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Plaintiff and the Waiting Time Penalties Subclass Against All Defendants

102. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and on-going until the violations are corrected, or the class is closed.

104. Section 203 of the California Labor Code provides that if an employer willfully fails to provide compensation promptly upon discharge or resignation, as required by Sections 201 and 202, the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

106. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.* DLSE Opinion Letter 2015-01, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to waiting time penalties).

[Labor Code § 204, 210]

107. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 108. Cal. Labor Code § 200 provides that “‘wages’ include all amounts for labor
3 performed by employees of every description, whether the amount is fixed or ascertained by the
4 standard of time, task, pieces, commission basis, or other method of calculation.”

5 109. Cal. Labor Code § 204 states that all wages earned by any person in any employment
6 are payable twice during the calendar month, and must be paid not more than seven days following
7 the close of the period when the wages were earned.

8 110. Labor Code § 204 expressly requires employers who pay employees on a weekly,
9 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
10 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff and the Class Members
11 all minimum, prevailing, and overtime wage compensation and meal and rest period premiums as
12 described above, Defendants failed to timely pay its employees within seven calendar days
13 following the close of payroll in accordance with Labor Code § 204 on a regular and consistent
14 basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
15 *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure
16 to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

17 111. As discussed in detail above, by failing to pay for all minimum, prevailing, and
18 overtime wages owed, and failing to pay meal and rest period premiums, Defendants failed to pay
19 Plaintiff and the Class at least twice per month in violation of Labor Code § 204. Defendants
20 regularly and consistently failed to pay Plaintiff minimum wages for all of their hours worked, and
21 for meal and rest period premiums.

22 112. As a result, Plaintiff and the Class are entitled to penalties pursuant to Labor Code §
23 210.

24 **NINTH CAUSE OF ACTION**
25 **UNFAIR AND UNLAWFUL COMPETITION**
26 [Cal. Business and Professions Code § 17200 *et seq.*]
Plaintiff and the Class Members Against All Defendants

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

1 114. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Class Members, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the
4 unfair and unlawful business practices of Defendants as alleged herein.

5 115. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 116. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum wages, failure to pay prevailing wages, failure to
9 pay overtime wages, failure to authorize or permit rest periods, failure to provide meal periods,
10 failure to reimburse business expenses, and failure to timely pay final wages, all in order to
11 decrease their costs and increase their profits.

12 117. At all times relevant herein, Defendants did not pay Plaintiff and Class Members
13 wages and monies and other financial obligations to which they were entitled.

14 118. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders,
15 Class Members, including Plaintiff, suffered a loss of wages and monies, all in an amount to be
16 shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and
17 laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

18 119. Defendants’ violations of the California Labor Code and IWC Wage Orders and its
19 scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices
20 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff
21 and all others similarly-situated.

22 120. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
23 unlawful, and harmful to Plaintiff, Class Members, and to the general public. Plaintiff seeks to
24 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
25 § 1021.5.

26 121. A violation of California Business & Professions Code § 17200, *et seq.* may be
27 predicated on the violation of any state or federal law. All of the acts described herein as violations
28 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in

1 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
2 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
3 violation of California Business and Professions Code §§ 17200, *et seq.*

4 122. Plaintiff, individually, and on behalf of the Class Members, has no plain, speedy,
5 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of
6 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
7 unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf
8 of the Class Members, have suffered and will continue to suffer irreparable harm unless
9 Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful
10 and/or fraudulent business practices.

11 123. Plaintiff, individually, and on behalf of the Class Members, are entitled to, and do
12 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
13 which Plaintiff and Class Members have been deprived, by means of the above-described unfair,
14 unlawful and/or fraudulent business practices. Plaintiff and Class Members are not obligated to
15 establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

16 124. Plaintiff, individually, and on behalf of the Class Members, are further entitled to
17 and do seek a declaration that the above described business practices are unfair, unlawful and/or
18 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
19 the above-described unfair, unlawful and/or fraudulent business practices in the future.

20 125. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiff and Class
21 Members are entitled to restitution of the wages withheld and retained by Defendants during a
22 period that commences four years prior to the filing of this complaint; a permanent injunction
23 requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of
24 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws;
25 and an award of costs.

26 **VI. PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for the following relief:

- 28 1. For an order certifying this action as a class action;

2. For compensatory damages in the amount of the regular rate of compensation made by Plaintiff and the Class for each day of noncompliant rest periods for which premium pay was not properly paid, as may be proven;

3. For compensatory damages in the amount of the regular rate of compensation made by Plaintiff and the Class for each day of noncompliant meal periods for which premium pay was not properly paid, as may be proven;

4. For compensatory damages in the amount of the unpaid wages for work performed by Plaintiff and the Class, as may be proven;

5. For liquidated damages in the amount of the unpaid wages for work performed by Plaintiff and the Class, as may be proven;

6. For compensatory damages in the amount of the unpaid overtime wages owed to Plaintiff and the Class, as may be proven;

7. For reimbursement of all incurred expenses by the Class on behalf of Defendant

8. For actual damages and/or penalties pursuant to Labor Code § 226(e) for Plaintiff and the Class, as may be proven;

9. For penalties pursuant to Labor Code § 203 for Plaintiff and the Class Members whose employment has ended three years prior to the filing of this Complaint and ongoing in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;

10. For restitution for unfair competition pursuant to Business & Professions Code §§ 17200 *et seq.*, including disgorgement of profits, as may be proven;

11. For all civil and statutory penalties described herein;

12. For an award of pre-judgment and post-judgment interest;

13. For an award providing for the payment of the costs of this suit;

14. For an award of attorneys' fees, to the extent provided by law; and

15. For such other and further relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of their claims by jury to the extent authorized by law.

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Dated: November 9, 2020

MELMED LAW GROUP, P.C.

By: Martin Sullivan
Martin Sullivan, Esq.
Attorneys for Plaintiff and the Putative Class