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County of Los Angeles

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Sherri B. Carter, Executive Office/Clerk
By: Maisha Pryor, Deputy

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
JOSE MARTINEZ

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
JOSE MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE MARTINEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHLAND ENERGY SYSTEMS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV06911

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198)
- (2) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512);
- (4) FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516);
- (5) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE

1 Plaintiff Jose Martinez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Southland Energy Systems, a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC
7 for recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et*
8 *seq.*, Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et*
9 *seq.*, and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”), in addition to seeking
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure
11 § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
12 the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a)
15 and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of
16 Los Angeles. Defendants own, maintain offices, transact business, have agent(s) within the County of
17 Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within
18 the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding the
22 filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause
23 of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was,
24 and is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or
25 property, and has been deprived of the rights guaranteed by Labor Code §§ 204, 226 *et seq.*, 226.7,
26 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*; California Business & Professions Code
27 § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 16, which sets employment standards
28 for the occupations in the construction, drilling, logging, and mining industries, which includes the

1 industry in which Plaintiff worked for Defendants.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
3 preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do)
4 business by being a self-described for-profit corporation that provides energy efficiency services
5 throughout southern California. These services include appliance services, air conditioning services,
6 and products designed to help homeowners significantly lower utility costs. Among other services
7 provided by Defendants are home rehabilitations, furnace repairs and installations, weatherization
8 measures, appliance replacement and repairs, installation of evaporative coolers, air conditioning and
9 window air conditioners, as well as complete lead abatement services including inspections,
10 monitoring, and work-plan designs. Defendants employed Plaintiff and other, similarly-situated non-
11 exempt employees within, among other counties, Los Angeles County and the state of California and,
12 therefore, were (and are) doing business in Los Angeles County and the State of California.

13 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
14 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
15 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
16 this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and
17 based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate,
18 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
19 Plaintiff and the Classes (as defined in Paragraph 21) to be subject to the unlawful employment
20 practices, wrongs, injuries and damages complained of herein.

21 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
22 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

23 7. At all times herein mentioned, each of said Defendants participated in the doing of the
24 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
25 and each of them, were the agents, servants, and employees of each and every one of the other
26 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
27 within the course and scope of said agency and employment. Defendants, and each of them, approved
28 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of

1 herein.

2 8. At all times mentioned herein, Defendants, and each of them, were members of and
3 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
4 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
5 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff, a current employee, has been employed by Defendants as an installer since
8 approximately 1984 through the present. However, Plaintiff has been on a medical leave of absence
9 since approximately January 28, 2021. At all relevant times during his employment, Plaintiff worked
10 as a non-exempt installer who was paid on a piece-rate basis. Plaintiff performed various duties
11 throughout his employment including, without limitation, installing various items in Defendants'
12 customers' homes, driving to and from assigned work sites at various locations of Defendants'
13 customers throughout Southern California, and completing paperwork.

14 10. Throughout his employment with Defendants, Plaintiff was a non-exempt employee
15 paid on a piece-rate basis, whereby Plaintiff was paid a certain rate per certain work units performed.
16 For example, Plaintiff was paid \$35.00 when a customer opened their door, \$14.00 for every door he
17 installed, \$6.00 for every lock he installed, and \$10.00 for inspecting a water heater. However, Plaintiff
18 is informed and believes, and based thereon alleges, that he and the other employees classified as non-
19 exempt piece rate employees were never separately compensated for time spent working on tasks which
20 were not compensated on a piece-rate basis, including hours spent cleaning and maintaining tools,
21 performing administrative tasks, waiting for customers, or travelling from jobsite to jobsite (e.g., non-
22 productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41
23 (“DTLA”) (“...we conclude that class members [paid on a piece-rate] were entitled to separate hourly
24 compensation for time spent waiting for repair work or performing other non-repair tasks directed by
25 the employer....”). As a result, Plaintiff was not paid all minimum wages owed for all hours worked
26 for workweeks where he was paid on a piece-rate basis. Further, when Plaintiff worked in excess of 8
27 hours in a day or 40 hours in a week, the failure by Defendants to compensate Plaintiff for all his work
28 time due to their unlawful piece rate compensation practices, Plaintiff was also deprived of all

1 overtimes wages owed.

2 11. During his employment with Defendants, Plaintiff and other non-exempt employees
3 (not just non-exempt piece rate employees), were instructed by Defendants to track their time worked
4 by using handwritten “Job Site Time Record” forms that included information related to the task
5 performed, time in, and time out, among other information. However, Plaintiff and other non-exempt
6 employees were directed not to record all time actually worked. Instead, Plaintiff and other non-
7 exempt employees were directed to record the time they arrived at the client’s house, which failed to
8 compensate them for all hours actually worked before arriving at the client’s house. By way of
9 example, Plaintiff would often be required and directed to perform additional duties before arriving at
10 the arrival at the first client’s house, including, without limitation, preparing the vehicle with the
11 necessary materials and supplies for the stops or job assignments for the day, and/or traveling to the
12 La Puente facility to retrieve necessary paperwork. In addition, Plaintiff was not compensated for all
13 time worked after departing the client’s house or last worksite for the day because Plaintiff was directed
14 to record the time he left the last house and/or worksite, not the time he actually stopped working as
15 he would be required to drive back to the shop, and perform other job duties.

16 12. As a result, Plaintiff and other non-exempt employees (not simply non-exempt piece-
17 rate employees) were not paid for compensable travel time to and from the assigned work site because
18 Defendants maintained a uniform policy or practice of instructing Plaintiff and other non-exempt
19 employees to record the time that they arrived at the client’s house and the time they left the client’s
20 house, but not the actual time the employee started working and stopped working. This uniform policy
21 or practice by Defendants resulted in Defendants not properly tracking the time worked by Plaintiff
22 and other non-exempt employees, and also resulted in Defendants not paying Plaintiff and other non-
23 exempt employees for all wages owed for the work they performed, including failing to pay them all
24 required minimum and overtime wages. Plaintiff contends these issues regarding failing to pay for all
25 time worked applied to all of Defendant’s non-exempt employees, whether paid by piece rate or by the
26 hour.

27 13. Throughout his employment with Defendants, Plaintiff and other non-exempt
28 employees (including non-exempt employees paid either by piece rate or by the hour) routinely worked

1 in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime
2 compensation equal to one and one-half times their respective regular rates of pay for all overtime
3 hours worked. Specifically, throughout the relevant time period, Defendants paid Plaintiff and other
4 non-exempt employees non-discretionary bonuses and/or incentive pay, including a bonus of \$2,500
5 if the employee serviced 50 homes in one month, as well as other forms of payments that cannot be
6 excluded from the regular rate of pay as a matter of law (collectively “Incentive Pay”). Despite Plaintiff
7 and other non-exempt employees (including non-exempt employees paid either by piece rate or by the
8 hour) earning Incentive Pay and working overtime hours during the corresponding pay period,
9 Defendants failed to correctly calculate the regular rates of pay for overtime pay purposes for Plaintiff
10 and other non-exempt employees (including non-exempt employees paid either by piece rate or by the
11 hour)As a result, Plaintiff and other non-exempt employees (including non-exempt employees paid
12 either by piece rate or by the hour)were underpaid all of their earned overtime and, as applicable,
13 double-time wages.

14 14. All non-exempt employees, whether paid by piece rate, by the hour or some other
15 means, are entitled to be provided with lawful meal periods by their employers in California.
16 Throughout his employment with Defendants, Plaintiff and other non-exempt employees (regardless
17 of how they were compensated) were not provided all required meal periods due to Defendants’ meal
18 period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal
19 periods when non-exempt employees work in excess of 5.0 hours in a day. Specifically, due to his job
20 duties which often required traveling between job locations, and other general work demands imposed
21 by Defendants, Plaintiff and other non-exempt employees (regardless of how they were compensated)
22 were often prevented from taking meal periods that commenced before the end of the 5th hour of work
23 and/or which were at least 30 minutes in length. This policy and practice of Defendants not providing
24 lawful meal periods to Plaintiff and other non-exempt employees and/or requiring Plaintiff and other
25 non-exempt employees to take a meal period after the end of the fifth hour of work violates California
26 law.

27 15. Although Plaintiff and other non-exempt employees (regardless of how they were
28 compensated) were not provided with all legally-compliant meal periods to which they were entitled,

1 Defendants failed to compensate Plaintiff and other non-exempt employees (regardless of how they
2 were compensated) with the required meal period premium for each workday in which they
3 experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief
4 during at least a portion of the class period, Defendants maintained no payroll code or other mechanism
5 for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally
6 compliant meal period was not provided to Plaintiff and their other non-exempt employees.

7 16. Plaintiff and other non-exempt employees (regardless of how they were compensated)
8 were also not authorized and permitted to take all legally required rest periods due to Defendants'
9 unlawful rest period policies and practices. Specifically, due to heavy work demands, Plaintiff was
10 not authorized to take required rest periods.

11 17. Moreover, during the times when Plaintiff and non-exempt employees paid on a piece-
12 rate basis of Defendant worked shifts in excess of 3.5 hours and took reset periods, such rest periods
13 were not paid because Defendants' piece-rate compensation plan failed to separately compensate
14 Plaintiff and other non-exempt employee paid on a piece-rate basis for required rest periods. *See*
15 *Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-
16 based compensation system did not separately compensate drivers for their rest periods."). As a result,
17 Plaintiff and non-exempt employee paid on a piece-rate basis were not paid at least the minimum wage
18 for all hours worked as well as all compensation owed pursuant to Labor Code section 226.2.

19 18. On those occasions when Plaintiff and other non-exempt employees (regardless of how
20 they were compensated) were not authorized and permitted to take all legally-compliant paid rest
21 periods to which they were entitled, Defendants failed to compensate Plaintiff and other non-exempt
22 employees (regardless of how they were compensated) with the required rest period premium for each
23 workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.
24 Further, upon information and belief during at least a portion of the class period, Defendants
25 maintained no payroll code or other mechanism for the payment of rest period premium payments
26 under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their
27 non-exempt employees.

28 19. As a result of Defendants' failure to pay all minimum and overtime wages, as well as

meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees (regardless of how they were compensated).

20. Additionally, Defendants' wage statements were also independently deficient as to any employees paid by piece-rate in that for said employees the wage statements did not include the total hours worked during the pay period nor the applicable piece rates of pay in violation of Labor Code section 226.

CLASS ACTION ALLEGATIONS

21. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The **Overtime Piece-Rate Class** consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week and were paid, at least in part, on a piece-rate basis during the four years preceding the filing of this lawsuit through the present. and/or (iii)
- b. The **Overtime Non-Exempt Class** consists of all of Defendants' current and former non-exempt employees in California (regardless of whether paid by piece rate, hourly or some other method) who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week and were subject to Defendants' timekeeping policies and/or practices during the four years preceding the filing of this lawsuit through the present;
- c. The **Overtime Incentive Pay Class** consists of all of Defendants' current and former non-exempt employees in California (regardless of whether paid by piece rate, hourly or some other method) who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week and received Incentive Pay during a week when overtime hours were worked, during the four years preceding the filing of this lawsuit through the present
- d. The **Minimum Wage Piece-Rate Class** consists of all Defendants' current and former non-exempt employees in California who were paid, at least in part, on a piece-rate basis during the four years preceding the filing of this lawsuit through the present.

- e. The **Minimum Wage Non-Exempt Class** consists of all of all of Defendants' current and former non-exempt employees in California (regardless of whether paid by piece rate, hourly or some other method) who were subject to Defendants' timekeeping policies and/or practices during the four years preceding the filing of this lawsuit through the present.
- f. The **Meal Period Class** consists of all of Defendants' current and former non-exempt employees in California (regardless of whether paid by piece rate, hourly or some other method) who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.
- g. The **Rest Period Piece-Rate Class** consists of all of Defendants' current and former non-exempt employees in California who were paid, at least in part, on a piece-rate basis, and worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present.
- h. The **Rest Period Non-Exempt Class** consists of all of Defendants' current and former non-exempt employees in California regardless of whether paid by piece rate, hourly or some other method) who worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present.
- i. The **Wage Statement Piece Rate Class** consists of all of Defendants' current and former non-exempt employees in California who were paid, at least in part, on a piece-rate basis and received wage statements that did not include the total hours worked during the pay period, the number of pieces earned, and/or did not include the rate at which the pieces were being paid during the pay period.
- j. The **Wage Statement Non-Exempt Class** consists of all members of the Overtime Piece Rate Class, Overtime Incentive Pay Class; Overtime Non-Exempt Class, Minimum Wage Piece Rate Class, Minimum Wage Non-Exempt Class, Meal Period Class, Rest Period Piece Rate Class, Rest Period Non-Exempt Class who received a wage statement, during the one year immediately preceding the filing of the lawsuit through the present.

k. The **UCL Class** consists of members of the: (i) Overtime Piece Rate Class; (ii) Overtime Non-Exempt Class; (iii) Overtime Incentive Pay Class; (iv) Minimum Wage Piece Rate Class; (v) Minimum Wage Non-Exempt Class; (vi) Meal Period Class; (vii) Rest Period Piece Rate Class; (viii) Rest Period Non-Exempt Class; (ix) Wage Statement Piece Rate Class; and/or (x) Wage Statement Non-Exempt Class, during the four years immediately preceding the filing of the lawsuit through the present

22. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes could number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

24. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants properly paid all minimum wages, and/or overtime wages at the regular rate to members of the Minimum Wage Piece Rate Class, Minimum Wage Non-Exempt Class, Overtime Piece Rate Class, Overtime Non-Exempt Class and/or Overtime Incentive Pay Class pursuant to Labor Code §§ 204, 226.3, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Piece Rate Class and the Rest Period Non-Exempt Class pursuant to Labor Code §§ 226.3, 226.7 and 516;

iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Non-Exempt Class and Wage Statement Piece Rate Class pursuant to Labor Code § 226; and

v. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

25. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, piece-rate compensation plan, minimum wage payment, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

26. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum wages and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required and paid rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest periods, and was not provided with accurate, itemized wage statements.

27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

28. **Superiority:** The California Labor Code is broadly remedial in nature and serves an

important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 21 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked

(hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Piece Rate Class, Overtime Non-Exempt Class and Overtime Incentive Pay Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 16. Labor Code § 510 and Wage Order 16, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 16, Section 3 also require an employer to pay an employee double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Piece Rate Class, Overtime Non-Exempt Class and Overtime Incentive Pay Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Piece Rate Class, Overtime Non-Exempt Class and Overtime Incentive Pay Class at one and one-half their regular rate of pay for such hours.

32. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Piece Rate Class, Overtime Non-Exempt Class and Overtime Incentive Pay Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’ fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 16, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. This cause of action is brought pursuant to Labor Code §§ 204, 226.3, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation

1 for all work performed.

2 35. At all times relevant herein, Defendants were required to properly compensate Plaintiff
3 and the members of the Minimum Wage Piece Rate Class and Minimum Wage Non-Exempt Class for
4 all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 16.
5 Wage Order 16, Section 4 requires an employer to pay to every employee on the established payday
6 for the period involved not less than the applicable minimum wage for all hours worked in the payroll
7 period. Defendants caused Plaintiff and the members of the Minimum Wage Piece Rate Class and
8 Minimum Wage Non-Exempt Class to work hours in a workweek but did not properly compensate
9 Plaintiff and the members of the Minimum Wage Piece Rate Class and Minimum Wage Non-Exempt
10 Class at least minimum wages for such hours.

11 36. At all times relevant herein, Defendants lacked good faith and had no reasonable
12 grounds for believing that their practices in failing to pay all minimum wages owed at the applicable
13 rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of
14 the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to
15 Plaintiff and the members of the Minimum Wage Piece Rate Class and Minimum Wage Non-Exempt
16 Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest
17 thereon, pursuant to Labor Code § 1194.2.

18 37. The foregoing practices and policies are unlawful and create entitlement to recovery by
19 Plaintiff and the members of the Minimum Wage Piece Rate Class and Minimum Wage Non-Exempt
20 Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as
21 well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit,
22 pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order
23 16, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 **(AGAINST ALL DEFENDANTS)**

27 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in

1 their affirmative obligation to provide all of their non-exempt employees in California (regardless of
2 how such non-exempt employees were compensated), including Plaintiff and members of the Meal
3 Period Class, with all legally compliant meal periods in accordance with the mandates of the California
4 Labor Code and Wage Order 16, § 11. Despite Defendants' violations, Defendants did not pay an
5 additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular
6 rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

7 40. As a result, Defendants are responsible for paying premium compensation for meal
8 period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of
9 suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, California Code of Civil
10 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS**

13 **(AGAINST ALL DEFENDANTS)**

14 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 42. Wage Order 16, § 12 and California Labor Code §§ 226.3, 226.7 and 516 establish the
16 right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
17 net rest time for each four (4) hour period worked, or *major fraction thereof*.

18 43. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of
19 the Rest Period Piece Rate Class and Rest Period Non-Exempt Class to take all required lawful rest
20 periods.

21 44. The foregoing violations create an entitlement to recovery by Plaintiff and members of
22 the Rest Period Piece Rate Class and Rest Period Non-Exempt Class in a civil action for the unpaid
23 amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil
24 penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 16,
25 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

4 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly
6 and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and the members
7 of the Wage Statement Piece Rate Class and Wage Statement Non-Exempt Class with accurate,
8 itemized wage statements that included among other requirements, accurate overtime rates, total gross
9 wages earned, total hours worked, piece rate units (when applicable), rate at which pieces were paid
10 (when applicable) meal and rest period premiums, rates of pay, and/or total net wages earned in
11 violation of Labor Code §226 *et seq.*

12 47. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Piece
13 Rate Class and Wage Statement Non-Exempt Class with complete and accurate itemized wage
14 statements resulted in actual injury, as said failures led to, among other things, the non-payment of all
15 wages, and deprived them of the information necessary to identify the discrepancies in Defendants'
16 reported data.

17 48. Defendants' failures create an entitlement to recovery by Plaintiff and members of the
18 Wage Statement Piece Rate Class and Wage Statement Non-Exempt Class in a civil action for all
19 damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil
20 penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

21 **SIXTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 50. Defendants have engaged and continue to engage in unfair and/or unlawful business
26 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
27 failing to pay all overtime and minimum wages owed, failing to provide all required meal periods and
28 failing to authorize and permit all required rest periods, failing to pay meal and rest period premium

wage payments, and failing to issue accurate, itemized wage statements.

51. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of all of the Classes described in Paragraph 21 above of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of all of the Classes described in Paragraph 21 above, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

53. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of all of the Classes described in Paragraph 21 above, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

56. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for

each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month; and
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

57. On February 19, 2021, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 54 (a)-(g). Attached hereto as **Exhibit A** is a true and correct copy of the February 19, 2021

correspondence. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.3, 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for penalties pursuant to Labor § 226;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each

1 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to
2 Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
3 (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
4 Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each
5 subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00
6 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for
7 those violations of the Labor Code for which no civil penalty is specifically provided, based on the
8 Labor Code violations cited in Paragraph 54 (a)-(g) above;

9 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
10 218.6 and Civil Code §§ 3287 and 3289;

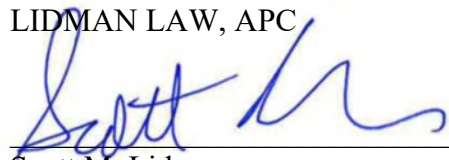
11 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5
12 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

14 Dated: May 21, 2021

Respectfully submitted,
LIDMAN LAW, APC

15
16 By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
JOSE MARTINEZ

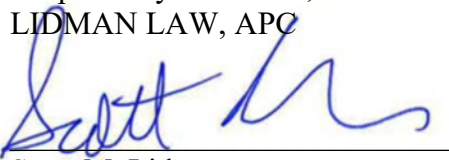
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

22
23 Dated: May 21, 2021

Respectfully submitted,
LIDMAN LAW, APC

24
25 By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
JOSE MARTINEZ

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

February 19, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Southland Energy Systems
c/o Alex Sotomayor, Agent for Service of Process
5729 Union Pacific Avenue
Commerce, CA 90022

**VIA U.S. CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

Southland Energy Systems
5729 Union Pacific Avenue
Commerce, CA 90022

Re: *Jose Martinez v. Southland Energy Systems*

To Whom It May Concern:

Please be advised that this law firm represents Jose Martinez in claims arising from his employment with Southland Energy Systems, a California corporation (“Defendant”). Mr. Martinez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Martinez intends to pursue a lawsuit on behalf of other “aggrieved employees”, which should be considered to include all current and former hourly employees in California who were paid, at least in part, on a piece-rate basis and who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Martinez, a current employee, has been employed by Defendant as an installer since approximately 1984 through the present. However, Mr. Martinez has been on a medical leave of absence since approximately January 28, 2021. At all relevant times during his employment, Mr. Martinez worked as a non-exempt installer who was paid on a piece-rate basis. Mr. Martinez performed various duties throughout his employment including, without limitation, installing various items in Defendant’s customers’ homes, driving to and from assigned work sites at various locations of Defendant’s customers throughout Southern California, and completing paperwork

Throughout his employment with Defendant, Mr. Martinez was paid on a piece-rate basis, whereby he was paid a certain rate per certain work units performed. For example, Mr. Martinez was

paid \$35.00 when a customer opened their door, \$14.00 for every door he installed, \$6.00 for every lock he installed, and \$10.00 for inspecting a water heater. However, Mr. Martinez is informed and believes, and based thereon alleges, that he was never separately compensated for time spent working on tasks which were not compensated on a piece-rate basis, including hours spent cleaning and maintaining tools, performing administrative tasks, waiting for customers, or travelling from jobsite to jobsite (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 (“DTLA”) (“...we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...”). As a result, Mr. Martinez was not paid all minimum wages owed for all hours worked for workweeks where he was paid on a piece-rate basis. Further, when Mr. Martinez worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendant to compensate Mr. Martinez for all his work time due to their unlawful piece rate compensation practices, Plaintiff was also deprived of all overtimes wages owed.

During his employment with Defendant, Mr. Martinez was instructed by Defendant to track his time worked by using handwritten “Job Site Time Record” forms that included information related to the task performed, time in, and time out, among other information. However, Mr. Martinez was directed not to record all time actually worked. Instead, Mr. Martinez was directed to record the time he arrived at the client’s house, which failed to compensate him for all hours actually worked before arriving at the client’s house. By way of example, Mr. Martinez would often be required and directed to perform additional duties before arriving at the arrival at the first client’s house, including, without limitation, preparing the vehicle with the necessary materials and supplies for the stops or job assignments for the day, and/or traveling to the La Puente facility to retrieve necessary paperwork. In addition, Mr. Martinez was not compensated for all time worked after departing the client’s house or last worksite for the day because Mr. Martinez was directed to record the time he left the last house and/or worksite, not the time he actually stopped working as he would be required to drive back to the shop, and perform other job duties.

As a result, Mr. Martinez was not paid for compensable travel time to and from the assigned work site because Defendant maintained a uniform policy or practice of instructing Mr. Martinez and other non-exempt employees to record the time that they arrived at the client’s house and the time they left the client’s house, but not the actual time the employee started working and stopped working. This uniform policy or practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Martinez, and also resulted in Defendant not paying Mr. Martinez for all wages owed for the work he performed, including failing to pay him all required minimum and overtime wages.

Throughout his employment with Defendant, Mr. Martinez and other non-exempt employees routinely worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their respective regular rates of pay for all overtime hours worked. Specifically, throughout the relevant time period, Defendant paid Mr. Martinez and other non-exempt employees non-discretionary bonuses and/or incentive pay, including a bonus of \$2,500 if the employee serviced 50 homes in one month, as well as other forms of payments that cannot be excluded from the regular rate of pay as a matter of law (collectively “Incentive Pay”). Despite Mr. Martinez and similarly situated employees earning Incentive Pay and working overtime hours during the corresponding pay period, Defendant failed to correctly calculate Mr. Martinez and similarly situated employees’ regular rates of pay for overtime purposes. As a result, Mr. Martinez and similarly situated employees were underpaid all of their earned overtime and, as applicable, double-time wages.

Throughout his employment with Defendant, Mr. Martinez was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties which often required traveling between job locations, and the work demands imposed by Defendant, Mr. Martinez was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. This policy and practice of Defendant not providing lawful meal periods to Mr. Martinez and/or requiring him and other non-exempt employees to take a meal period after the end of the fifth hour of work violates California law.

Although Mr. Martinez was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Martinez with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Martinez and its other non-exempt employees.

Mr. Martinez was also not authorized and permitted to take all legally required rest periods due to Defendant's unlawful rest period policies and practices. Specifically, due to heavy work demands, Mr. Martinez was not authorized to take required rest periods. Moreover, Mr. Martinez worked shifts in excess of 3.5 hours, and was never provided with a paid rest period for every 4-hour period worked, or *major fraction thereof*, because Defendant's piece-rate compensation plan failed to separately compensate Mr. Martinez for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."). As a result, Mr. Martinez was not paid at least the minimum wage for all hours worked as well as all compensation owed pursuant to Labor Code section 226.2, and was deprived of all rest period premium payments.

On those occasions when Mr. Martinez was not authorized and permitted to take all legally-compliant paid rest periods to which he was entitled, Defendant failed to compensate Mr. Martinez with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to its non-exempt employees.

As a result of Defendant's failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Martinez.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"):

Minimum Wage Violations

Defendant was required to pay Mr. Martinez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2,

1197; The Wage Order 16, § 4. Mr. Martinez and other aggrieved employees were not paid for all hours worked due to Defendant's timekeeping and piece-rate compensation practices. As alleged above, Defendant caused Mr. Martinez and other aggrieved employees to work hours in a workweek but did not properly compensate Mr. Martinez and other aggrieved employees at least minimum wages for all such hours, due to Defendant's unlawful timekeeping practices and piece-rate compensation plans. This practice by Defendant resulted in Defendant not paying Mr. Martinez for all wages owed for the work he performed, including failing to pay him all required minimum wages.

Overtime Violations

Defendant was required to pay Mr. Martinez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 16, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Defendant had a policy/practice of not recording all of Mr. Martinez's work time such that he was not fully paid for all time worked and Defendant paid Mr. Martinez on a piece-rate basis. As detailed above, for at least a portion of the time period relevant to his claims, Mr. Martinez received non-discretionary bonuses, and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Martinez, Defendant failed to include all forms of Incentive Pay when calculating Mr. Martinez's regular rate of pay, thereby causing Mr. Martinez to be underpaid all of his required overtime wages. Rather, Mr. Martinez was only paid one and a half times (or two times in the case of double-time hours) his base hourly rate, which was not equal to his regular rate, as Defendant failed to include the various forms of Incentive Pay earned during corresponding time periods that were required to be included in the regular rate. As a result of these policies/practices, Mr. Martinez and other aggrieved employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Martinez and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As described above, as a result of the Defendant's failure to accurately record its employees time worked and the work demands imposed by Defendant, Defendant provided late, short, or otherwise unlawful meal periods to Mr. Martinez and its non-exempt employees. As a result, Mr. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Martinez was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Martinez and other aggrieved employees

with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Martinez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. Specifically, Mr. Martinez worked shifts in excess of 3.5 hours, but was never provided with a paid rest period for every 4-hour period worked, or *major fraction thereof* because of Defendant's piece-rate compensation plan. As a result, Mr. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Martinez and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Martinez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Mr. Martinez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Martinez's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Martinez and other aggrieved employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Martinez and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Martinez and other aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Martinez and other aggrieved employees;

- e) Defendant violated Labor Code § 226 by failing to furnish Mr. Martinez and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendant violated Labor Code § 204 by failing to pay Mr. Martinez and other aggrieved employees all earned wages at least twice during each calendar month; and
- g) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Martinez and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On May 21, 2021, I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

MALEK & MALEK LAW OFFICES

Laura Lewis, Esq. (llewis@maleklaw.com)
Jeffrey Malek, Esq. (jmalek@maleklaw.com)
Steven O'Herin, Esq. (soherin@maleklaw.com)
3625 Del Amo Boulevard, Suite 350
Torrance, CA 90503
Phone: (310) 540-5100
Fax: (310) 371-7242

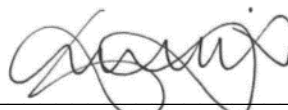
Attorneys for Defendant
SOUTHLAND ENERGY SYSTEMS

☐ **(BY MAIL)** I am "readily familiar" with Lidman Law, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

☒ **(BY ELECTRONIC SERVICE)** I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service address(es) listed above by electronic transmission via Case Anywhere.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 21, 2021 at El Segundo, California



Dana Joudi