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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED

LE'ROI LOPEZ, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

BIG CREEK LUMBER COMPANY, a
California corporation; THE BIG CREEK
MANAGEMENT COMPANY, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21CV-00613

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE
§§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (9) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Le’Roi Lopez, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this
5 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
6 and occurrences related to this action occurred in this county.

7 THE PARTIES

8 4. Plaintiff Le'Roi Lopez is a resident of Atwater, in Merced County, California.
9 Defendants employed Plaintiff as an hourly paid, non-exempt Yard Help and Customer
10 Service Representative from approximately March 2017 to July 2020. Plaintiff worked for
11 Defendants at their location in Atwater, California. During his employment, Plaintiff
12 typically worked eight (8) hours or more per day, and five (5) or more days per week.
13 Plaintiff's primary job duties included, without limitation, providing customer service,
14 receiving materials delivered to the yard, speaking with vendors to assist with sales, creating
15 sales reports, unloading the rail cart, preparing orders, and operating a forklift and saw.

16 5. BIG CREEK LUMBER COMPANY was and is, upon information and belief, a
17 California corporation, and at all times hereinafter mentioned, an employer whose employees
18 are engaged throughout this county, the State of California, or the various states of the United
19 States of America.

20 6. THE BIG CREEK MANAGEMENT COMPANY was and is, upon information
21 and belief, a California corporation, and at all times hereinafter mentioned, an employer
22 whose employees are engaged throughout this county, the State of California, or the various
23 states of the United States of America.

24 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
25 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
26 amend the complaint and serve such fictitiously named Defendants once their names and
27 capacities become known.

28 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of BIG CREEK LUMBER COMPANY and
2 THE BIG CREEK MANAGEMENT COMPANY at all relevant times.

3 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, BIG CREEK
5 LUMBER COMPANY, THE BIG CREEK MANAGEMENT COMPANY, and/or DOES 1
6 through 10 (collectively, “Defendants” or “BIG CREEK LUMBER”), each acting as the
7 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
8 other co-Defendants and was acting within the course and scope of such agency, employment,
9 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
10 of any and all Defendants were in accordance with, and represent, the official policy of
11 Defendants.

12 10. At all relevant times, Defendants, and each of them, ratified each and every act
13 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all the other Defendants in proximately causing
15 the damages herein alleged.

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

19 12. Under California law, Defendants are jointly and severally liable as employers
20 for the violations alleged herein because they have each exercised sufficient control over the
21 wages, hours, working conditions, and employment status of Plaintiff and class members.
22 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
23 controlled their work schedule and/or conditions of employment, determined their rate of pay,
24 and maintained their employment records. Defendants suffered or permitted Plaintiff and
25 class members to work and/or “engaged” Plaintiff and class members so as to create a
26 common-law employment relationship. As joint employers of Plaintiff and class members,
27 Defendants are jointly and severally liable for the civil penalties and all other relief available
28 to Plaintiff and class members under the law.

1 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by
5 Plaintiff and class members;
6 (b) jointly exercised meaningful control over Plaintiff's and class members'
7 wages, hours, and working conditions, including the quantity, quality
8 standards, speed, scheduling, and operative details of the tasks
9 performed by Plaintiff and class members;
10 (c) jointly required that Plaintiff and class members perform work which is
11 an integral part of Defendants' businesses; and
12 (d) jointly exercised control over Plaintiff and class members as a matter of
13 economic reality in that Plaintiff and class members were dependent on
14 Defendants, who shared the power to set the wages of Plaintiff and class
15 members and determined their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and
17 noncompliance with other statutory provisions governing their
18 employment.

19 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 there has existed a unity of interest and ownership between Defendants such that any
21 individuality and separateness between the entities has ceased.

22 15. BIG CREEK LUMBER COMPANY, THE BIG CREEK MANAGEMENT
23 COMPANY, and/or DOES 1 through 10 are therefore alter egos of each other.

24 16. Adherence to the fiction of the separate existence of Defendants would permit
25 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
26 from liability for the wrongful acts committed by them under the name BIG CREEK
27 LUMBER.

28 17. Plaintiff further alleges, upon information and belief, that Defendants BIG

1 CREEK LUMBER COMPANY and THE BIG CREEK MANAGEMENT COMPANY are
2 alter egos of each other for the following reasons:

- 3 (a) On the California Secretary of State's website
4 (<https://businesssearch.sos.ca.gov/>), BIG CREEK LUMBER
5 COMPANY and THE BIG CREEK MANAGEMENT COMPANY
6 share the same entity address and mailing address, "3564 HIGHWAY 1,
7 DAVENPORT, CALIFORNIA 95017;"
- 8 (b) According to Defendants' most recent "Statement of Information" forms
9 filed with the California Secretary of State, BIG CREEK LUMBER
10 COMPANY and THE BIG CREEK MANAGEMENT COMPANY
11 share the same officers, directors, and/or registered agents, including,
12 but not limited to, Homer T. McCrary, who serves as a Director for BIG
13 CREEK LUMBER COMPANY and registered agent for THE BIG
14 CREEK MANAGEMENT COMPANY; and
- 15 (c) On information and belief, BIG CREEK LUMBER COMPANY and
16 THE BIG CREEK MANAGEMENT COMPANY utilize the same
17 standardized employment forms and issue the same employment
18 policies.

19 **GENERAL ALLEGATIONS**

20 18. Defendants operate five retail lumber yards, a sawmill, a wholesale division, a
21 forestry department, and a logging operation. Upon information and belief, Defendants
22 maintain a single, centralized Human Resources ("HR") department at their company
23 headquarters in Davenport, California, which is responsible for the recruiting and hiring of
24 new employees, and communicating and implementing Defendants' company-wide policies,
25 including timekeeping policies and meal and rest period policies, to employees throughout
26 California.

27 19. In particular, Plaintiff and class members, on information and belief, received
28 the same standardized documents and/or written policies. Upon information and belief, the

1 usage of standardized documents and/or written policies, including new-hire documents,
2 indicate that Defendants dictated policies at the corporate level and implemented them
3 company-wide, regardless of their employees' assigned locations or positions. Upon
4 information and belief, Defendants set forth uniform policies and procedures in several
5 documents provided at an employee's time of hire.

6 20. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their company headquarters in Davenport, California, which processes payroll
8 for all non-exempt, hourly paid employees working for Defendants at their various locations
9 and jobsites in California, including Plaintiff and class members. Based upon information and
10 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
11 employees in California, irrespective of their work locations. Upon information and belief,
12 Defendants process payroll for departing employees in the same manner throughout the State
13 of California, regardless of the manner in which each employee's employment ends.

14 21. Defendants continue to employ non-exempt or hourly paid employees in
15 California.

16 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
18 and advisors knowledgeable about California labor and wage law, employment and personnel
19 practices, and about the requirements of California law.

20 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
21 members were not paid for all hours worked because all hours worked were not recorded.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive certain wages for
24 overtime compensation and that they were not receiving certain wages for overtime
25 compensation.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to be paid at a regular rate
28 of pay, and corresponding overtime rate of pay, that included as eligible income all

1 remuneration required by law, including but not limited to, all income derived from incentive
2 pay, nondiscretionary bonuses, and/or other forms of compensation.

3 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive at least minimum
5 wages for compensation and that they were not receiving at least minimum wages for work
6 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
7 and class members were not paid at least minimum wages for work done off-the-clock.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to meal periods in
10 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
11 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
12 periods and that Plaintiff and class members were not provided with all meal periods or
13 payment of one (1) additional hour of pay at their regular rates of pay when they did not
14 receive a timely, uninterrupted, thirty (30) minute meal period.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to rest periods in
17 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
18 additional hour of pay at their regular rates of pay when they were not authorized and
19 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
20 and class members were not authorized and permitted to take compliant rest periods, nor did
21 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
22 pay at their regular rates of pay when they were not authorized and permitted to take a
23 compliant rest period.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to recovery periods in
26 accordance with the Labor Code and applicable General Industry Safety Order or payment of
27 one (1) additional hour of pay at their regular rates of pay when they were not provided a
28 compliant recovery period. In violation of the California Labor Code, Plaintiff and class

1 members were not provided compliant recovery periods, nor did Defendants provide Plaintiff
2 and class members with payment of one (1) additional hour of pay at their regular rates of pay
3 when they were not provided a compliant recovery period.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive complete and
6 accurate wage statements in accordance with California law. In violation of the California
7 Labor Code, Plaintiff and class members were not provided complete and accurate wage
8 statements.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they had a duty to maintain accurate and complete payroll records in
11 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
12 and intentionally failed to do so.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of all
15 wages earned upon termination of employment. In violation of the California Labor Code,
16 Plaintiff and class members did not receive payment of all wages due, including, but not
17 limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages;
18 and/or reporting time pay, within permissible time periods.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of wages
21 during their employment. In violation of the California Labor Code, Plaintiff and class
22 members did not receive payment of all wages, including, but not limited to, overtime wages;
23 minimum wages; meal, rest, and recovery period premium wages; and/or reporting time pay,
24 within permissible time periods.

25 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
27 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
28 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

1 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive all reporting time
3 pay when Defendants required Plaintiff and class members were required to report to work but
4 were put to work for less than half of their regular scheduled shift. In violation of the
5 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

6 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to be paid a split-shift
8 premium when they returned to work for an additional shift in the same day, after having been
9 clocked out for more than an hour.

10 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment and that they did not receive full reimbursement of applicable
14 business-related expenses and costs incurred.

15 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
17 and class members with safety devices and safeguards to protect their life, safety, and health
18 in the workplace, but willfully, knowingly, and intentionally failed to do so.

19 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
22 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
23 falsely represented to Plaintiff and class members that they were properly denied wages, all in
24 order to increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 40. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the LWDA for violations of the California Labor Code and

1 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
2 civil action brought on behalf of themselves and other current or former employees pursuant
3 to procedures outlined in California Labor Code section 2699.3.

4 41. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
5 person who was employed by the alleged violator and against whom one or more of the
6 alleged violations was committed.”

7 42. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
9 or former employees and one or more of the alleged violations were committed against them.

10 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
12 following requirements have been met:

- 13 a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged
17 violation.
- 18 b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 c) The LWDA shall notify the employer and the aggrieved employee or
22 representative by certified mail that it does not intend to investigate the
23 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
24 the postmark date of the aggrieved employee’s notice. Upon receipt of
25 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
26 (65) calendar days of the postmark date of the aggrieved employee’s
27 notice, the aggrieved employee may commence a civil action pursuant
28 to California Labor Code section 2699 to recover civil penalties.

1 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
2 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

- 5 a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated (other than those listed in Section 2699.5), including the
9 facts and theories to support the alleged violation.
- 10 b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice sent by the aggrieved
15 employee or representative. The employer shall give written notice
16 within that period of time by certified mail to the aggrieved employee or
17 representative and by online filing with the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the aggrieved employee may
21 commence a civil action pursuant to Section 2699.

22 45. On March 4, 2021, Plaintiff provided written notice by online filing to the
23 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-823514-21. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1”.

2 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the notice described above to the LWDA, and the LWDA has not responded that it
4 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

5 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
8 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

9 48. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.”

18 49. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
20 rights by violating various sections of the California Labor Code as set forth above.

21 50. As set forth below, Defendants have violated numerous provisions of both the
22 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
23 Order.

24 51. Pursuant to PAGA, and in particular, California Labor Code sections 256,
25 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c), and 2699.5 ,
26 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and
27 collection of civil penalties for himself, all other aggrieved employees, and the State of
28 California against Defendants for violations of California Labor Code sections 201, 202, 203,

204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

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

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

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

55. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

56. Members of the Class and Subclass are referred to herein as "class members."

57. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

58. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiff's and class members' overtime rate of pay was based;

- 1 (c) Whether Defendants failed to pay Plaintiff and class members at least
- 2 minimum wages for all hours worked;
- 3 (d) Whether Defendants failed to provide Plaintiff and class members with
- 4 meal periods;
- 5 (e) Whether Defendants failed to authorize and permit Plaintiff and class
- 6 members to take rest periods;
- 7 (f) Whether Defendants failed to provide Plaintiff and class members with
- 8 recovery periods;
- 9 (g) Whether Defendants provided Plaintiff and class members with
- 10 complete and accurate wage statements as required by California Labor
- 11 Code section 226(a);
- 12 (h) Whether Defendants maintained accurate payroll records as required by
- 13 California Labor Code section 1174(d);
- 14 (i) Whether Defendants failed to pay earned overtime wages; minimum
- 15 wages; meal, rest, and recovery period premium wages; and/or reporting
- 16 time pay due to Plaintiff and class members upon their discharge;
- 17 (j) Whether Defendants failed timely to pay overtime wages; minimum
- 18 wages; meal, rest, and recovery period premium wages; and/or reporting
- 19 time pay due to Plaintiff and class members during their employment;
- 20 (k) Whether Defendants failed to pay Plaintiff and/or class members for the
- 21 costs of mandatory physical examinations and/or drug testing;
- 22 (l) Whether Defendants required Plaintiff and class members to report to
- 23 work, but failed to provide them with work or provided them with less
- 24 than half their scheduled day's work, without properly compensating
- 25 them as required by California Code of Regulations, Title 8, section
- 26 11070, subsection 5;
- 27 (m) Whether Defendants required Plaintiff and class members to return to
- 28 work for an additional shift in the same day, after having been clocked

1 out for more than an hour, without paying Plaintiff and class members
2 an addition hour of pay at the minimum wage as required by California
3 Code of Regulations, Title 8, section 11070(4)(C);

- 4 (n) Whether Defendants failed to reimburse Plaintiff and class members for
5 necessary and required business-related expenditures and/or losses
6 incurred by them in the scope of their employment;
- 7 (o) Whether Defendants failed to provide Plaintiff and class members with
8 safety devices and safeguards;
- 9 (p) Whether Defendants engaged in unlawful and unfair business practices
10 in violation of California Business & Professions Code sections 17200,
11 *et seq.*; and
- 12 (q) The appropriate amount of damages, restitution, or monetary penalties
13 resulting from Defendants' violations of California law.

14 59. There is a well-defined community of interest in the litigation and the class
15 members are readily ascertainable:

- 16 (a) Numerosity: The class members are so numerous that joinder of all
17 members would be unfeasible and impractical. The membership of the
18 entire class is unknown to Plaintiff at this time; however, the class is
19 estimated to be greater than one hundred (100) individuals and the
20 identity of such membership is readily ascertainable by inspection of
21 Defendants' employment records.
- 22 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
23 protect the interests of each class member with whom he has a well-
24 defined community of interest, and Plaintiff's claims (or defenses, if
25 any) are typical of all class members as demonstrated herein.
- 26 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
27 protect the interests of each class member with whom he has a well-
28 defined community of interest and typicality of claims, as demonstrated

herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

**Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime
(Against all Defendants)**

60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

1 61. Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code
3 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
4 be the . . . standard conditions of labor for employees. The employment of any employee . . .
5 under conditions of labor prohibited by the order is unlawful.”

6 62. California Labor Code section 1198 and the applicable IWC Wage Order
7 provide that it is unlawful to employ persons without compensating them at a rate of pay
8 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
9 number of hours worked by the person on a daily or weekly basis.

10 63. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and class members working more than eight (8) hours in a day
12 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
13 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
14 workweek.

15 64. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
17 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
18 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
19 employee, including nondiscretionary bonuses and incentive pay.

20 65. California Labor Code section 510 codifies the right to overtime compensation
21 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
23 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
25 in a day on the seventh (7th) day of work.

26 66. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
2 hours in a week, because all hours worked were not recorded.

3 67. First, during the relevant period, Defendants had a policy and/or practice of
4 discouraging and impeding Plaintiff and class members from recording hours worked that
5 were outside of their scheduled shifts, in order to limit the amount of overtime employees
6 could accrue. On information and belief, this policy of limiting overtime, coupled with
7 Defendants' practice of understaffing and assignment of heavy workloads (*see infra*), led
8 Plaintiff and class members to work off-the-clock before and after their scheduled shift times
9 in order to complete their assigned tasks. For example, Plaintiff typically spent 5-15 minutes
10 reviewing and responding to work orders that were assigned to him before he could clock in
11 for his shift. After clocking out for his shift, Plaintiff typically spent 5-10 minutes helping
12 customers who stopped him for assistance because, per Defendants' policies, employees were
13 required to assist customers immediately or locate an available associate to help.

14 68. Moreover, on information and belief, Defendants engaged in a policy and/or
15 practice of altering time records at the discretion of management. For example, Defendants'
16 management would adjust Plaintiff's and class members' time records and delete time
17 recorded before and/or after their scheduled shifts to avoid having to pay overtime wages. As
18 a result of Defendants' policy and/or practice, Plaintiff and class members were not paid
19 overtime wages for all overtime hours incurred. For example, Plaintiff would periodically
20 clock in up to 30 minutes before his scheduled shift start time, but was only paid for his
21 scheduled shift hours.

22 69. Second, Defendants had, and continue to have, a company-wide policy and/or
23 practice of requiring Plaintiff and class members to perform tasks off-the-clock, such as
24 responding to phone communications from customers and preparing for seasonal events. For
25 example, Plaintiff and class members were required to use their personal cellular phones to
26 complete their work-related duties, such as communicating with clients to respond to customer
27 inquiries and effectuate sales. Plaintiff spent 15-45 minutes each week off-the-clock
28 responding to phone calls and text messages from clients. As a further example, during

1 seasonal events, Defendants' managers instructed Plaintiff and class members not to clock in,
2 saying they would manually enter Plaintiff's and class members' hours worked, but then
3 failed to do so. As a result, Plaintiff and class members worked off-the-clock preparing for
4 these seasonal events at least several times per year. Defendants failed to track this time
5 Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class
6 members received no compensation for this time.

7 70. Third, as stated, Defendants had, and continue to have, a company-wide policy
8 and/or practice of understaffing their locations while assigning heavy workloads, resulting in a
9 failure to provide Plaintiff and class members with adequate meal period coverage. Moreover,
10 Defendants also had a company-wide policy and/or practice of requiring Plaintiff and class
11 members to carry company-issued radios and respond to calls at all times during their shifts.
12 Defendants required that Plaintiff and class members be available via radio at all times,
13 including during their unpaid meal periods. Thus, Plaintiff and class members had their meal
14 periods interrupted and/or had to forgo their meal periods altogether, in order to handle their
15 workloads. For example, on several occasions, Plaintiff's meal periods were interrupted or
16 cut short by 5-10 minutes in order to assist customers or respond to his radio because there
17 were no other employees available to complete these duties.

18 71. Defendants knew or should have known that as a result of these company-wide
19 practices and/or policies, Plaintiff and class members were performing their assigned duties
20 off-the-clock before and after their shifts and during meal periods, and were suffered or
21 permitted to perform work for which they were not paid. Because Plaintiff and class members
22 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
23 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
24 members were not paid overtime wages for all of the overtime hours they actually worked.

25 72. Furthermore, on information and belief, Defendants did not pay Plaintiff and
26 class members the correct overtime rate for the recorded overtime hours that they generated.
27 In addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay,
28 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the

California Labor Code, Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

73. Specifically, Defendants paid Plaintiff and class members nondiscretionary bonuses based on a profit-sharing formula. On information and belief, some of these nondiscretionary bonuses were listed on Plaintiff's and class members' wage statements as "Bonus." During pay periods that Plaintiff and class members were paid overtime wages, Defendants did not always incorporate the nondiscretionary bonuses and/or incentive pay into Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a company-wide basis.

74. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

77. As stated, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and class members for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to Defendants' uniform practice of understaffing and assignment of heavy workloads and requirement that employees carry and respond to their radios at all times, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

78. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

79. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

(Against all Defendants)

28 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 81. At all relevant times herein set forth, California Labor Code section 512(a)
3 provides that an employer may not require, cause, or permit an employee to work for a period
4 of more than five (5) hours per day without providing the employee with a meal period of not
5 less than thirty (30) minutes, except that if the total work period per day of the employee is
6 not more than six (6) hours, the meal period may be waived by mutual consent of both the
7 employer and the employee. Under California law, first meal periods must start after no more
8 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

9 82. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 83. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
13 the applicable IWC Wage Order require employers to provide a second meal period of not less
14 than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
15 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
16 hours worked is no more than twelve (12) hours, the second meal period may be waived by
17 mutual consent of the employer and the employee only if the first meal period was not waived.

18 84. As stated, during the relevant time period, Defendants had, and continue to
19 have, a company-wide policy and/or practice of understaffing while assigning heavy
20 workloads, including meeting daily deadlines for lumber orders and deliveries. Further,
21 Defendants had a company-wide practice of failing to adhere to a schedule of meal periods,
22 resulting in Plaintiff and class members having their meal periods cut short to return to work
23 or waiting extended periods of time before taking meal periods, due to the workload and
24 pressure to meet deadlines. Additionally, as described above, Defendants' requirement that
25 employees carry radios at all times also prevented Plaintiff and class members from taking
26 compliant meal periods.

27 85. Defendants' practices and policies prevented Plaintiff and class members from
28 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class

1 members would be forced to work in excess of five (5) hours before taking a meal period and,
2 at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.
3 For example, at times, Plaintiff took his meal periods late, after the end of his sixth hour of
4 work, in order to finish his assigned duties, such as assisting customers or filling orders.
5 Plaintiff's meal periods were also cut short or interrupted by 5-10 minutes on several
6 occasions when he was required to assist customers due to a lack of coverage.

7 86. Moreover, because Defendants frowned upon employees accruing meal period
8 penalties, Defendants' management would adjust Plaintiff's and class members' time records
9 and/or pressured employees to clock out for meal periods to reflect compliant meal periods,
10 regardless of whether they had received a compliant meal period, in order to strictly limit meal
11 penalties that would need to be paid by Defendants. For example, Plaintiff was required to
12 notify his supervisor if his meal period was going to be late so that his supervisor could
13 manually adjust the time entries to record that he had received compliant meal periods on
14 shifts when he had not, in fact, received these timely meal periods.

15 87. Additionally, Defendants did not provide Plaintiff and class members with
16 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
17 day. During his employment, Plaintiff was never given a second meal period even though he
18 typically worked shifts of ten (10) hours or more during the summer months. Plaintiff and
19 class members did not sign valid meal period waivers on days that they were entitled to meal
20 periods and were not relieved of all duties.

21 88. At all times herein mentioned, Defendants knew or should have known that, as
22 a result of these policies, Plaintiff and class members were prevented from being relieved of
23 all duties and required to perform some of their assigned duties during meal periods.
24 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
25 members meal period premium wages when meal periods were late, interrupted, shortened, or
26 missed.

27 89. Moreover, Defendants engaged in a company-wide practice and/or policy of
28 not paying all meal period premiums owed when compliant meal periods are not provided.

1 Because of Defendants’ practices and/or policies, Plaintiff and class members have not
2 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
3 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
4 interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct
5 rate of pay for premium wages because Defendants systematically failed to include all forms
6 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
7 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and
8 class members compliant meal periods in violation of California Labor Code sections 226.7,
9 512(a), and 516 and failed to pay the full meal period premiums due.

10 90. Defendants’ conduct violates the applicable IWC Wage Order, and California
11 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
12 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
13 rate of compensation for each work day that the meal period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
16 **(Against all Defendants)**

17 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 92. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
21 members’ employment by Defendants.

22 93. At all relevant times, the applicable IWC Wage Order provides that “[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period” and that the “rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof” unless the total daily work time is less than three and one-half
27 (3½) hours.

28 94. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable
2 order of the California IWC. To comply with its obligation to authorize and permit rest
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
4 employer must “relinquish any control over how employees spend their break time, and
5 relieve their employees of all duties—including the obligation that an employee remain on
6 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
7 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
8 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
9 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
10 that a required rest period was not authorized and permitted.

11 95. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
13 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
14 policy and/or practice of understaffing and assigning heavy workloads prevented Plaintiff and
15 class members from being relieved of all duty in order to take compliant rest periods.
16 Moreover, as stated, Defendants also had a company-wide policy and/or practice of requiring
17 employees to carry company-issued radios and respond to calls at all times during their shifts,
18 including rest periods. Additionally, Defendants failed to schedule rest periods at all, which,
19 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
20 Plaintiff and class members not being authorized and permitted to take compliant rest periods.

21 96. Furthermore, upon information and belief, Defendants maintained a company-
22 wide on-premises practice and/or policy requiring that Plaintiff and class members remain on
23 Defendants’ premises during their rest periods. Because Plaintiff and class members were
24 restricted from leaving the premises during rest periods, they were denied the ability to use
25 their rest periods freely for their own purposes. Thus, Defendants effectively maintained
26 control over Plaintiff and class members during rest periods.

27 97. As a result of Defendants’ practices and policies, Plaintiff and class members
28 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without

1 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
2 Plaintiff missed all of his rest periods because of the heavy workload and lack of coverage.
3 Additionally, Plaintiff did not receive a third rest period when he worked shifts in excess of 10
4 hours.

5 98. Defendants have also engaged in a company-wide policy and/ or practice of not
6 paying all rest period premiums owed when compliant rest periods are not authorized and
7 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members one
8 (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
9 class members at the correct rate of pay for premium wages because Defendants failed to include
10 all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
11 of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class
12 members rest periods and failed to pay them rest period premium wages due, in violation of
13 Labor Code section 226.7, 516, and the applicable IWC Wage Order.

14 99. Defendants’ conduct violates the applicable IWC Wage Order and California
15 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
16 to recover from Defendants one (1) additional hour of pay at the employee’s regular rate of
17 compensation for each work day that a compliant rest period was not authorized and
18 permitted.

19 **FIFTH CAUSE OF ACTION**
20 **Violation of California Labor Code §§ 226.7 and 1198 & California Code of Regulations**
21 **Title 8, Section 3395—Heat Recovery Period Violations**
22 **(Against all Defendants)**

23 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 101. At all relevant times herein set forth, the applicable General Industry Safety
26 Order and California Labor Code sections 226.7 and 1198 were applicable to Plaintiff’s and
27 class members’ employment by Defendants.

28 102. At all relevant times, California Labor Code section 226.7(a) defines “recovery

period” to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that “[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling.” Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

103. During the relevant time period, Defendants violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Defendants failed to provide Plaintiff and class members with recovery periods. For example, during the first 18 months of his employment, Plaintiff was not provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working outdoors in the lumber yard.

104. Defendants also have engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. As a result, Defendants denied Plaintiff and class members recovery periods and failed to pay them recovery period premium wages due, in violation of Labor Code section 226.7 and the applicable General Industry Safety Order.

105. Defendants’ conduct violates the applicable General Industry Safety Order and California Labor Code sections 226.7 and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular

1 rate of compensation for each work day that a compliant recovery period was not provided.

2 **SIXTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
4 **Statements and Failure to Maintain Accurate Payroll Records**
5 **(Against all Defendants)**

6 106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 107. At all relevant times herein set forth, California Labor Code section 226(a)
9 provides that every employer shall furnish each of his or her employees an accurate and
10 complete itemized wage statement in writing, including, but not limited to, the name and
11 address of the legal entity that is the employer, the inclusive dates of the pay period, total
12 hours worked, and all applicable rates of pay.

13 108. At all relevant times, Defendants have knowingly and intentionally provided
14 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
15 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
16 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
17 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
18 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
19 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

20 109. Because Defendants did not record the time Plaintiff and Subclass members
21 spent working off-the-clock and deducted time from their records for meal periods that were
22 interrupted and/or missed (and therefore time for which they should have been paid),
23 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
24 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
25 respectively. For the same reason, Defendants failed to accurately list the total number of
26 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed
27 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
28 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

1 110. Second, because Defendants did not calculate Plaintiff’s and Subclass
2 members’ regular rate of pay correctly for purposes of paying overtime, Defendants did not
3 list the correct amount of gross wages earned by Plaintiff and Subclass members in
4 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
5 amount of net wages earned by Plaintiff and Subclass members in violation of section
6 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
7 the pay period, namely, correct overtime rates of pay and correct rates of pay for premium
8 wages, in violation of section 226(a)(9).

9 111. The wage statement deficiencies also include, among other things, failing to list
10 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
11 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
12 only the last four digits of his or her social security number or an employee identification
13 number other than a social security number; failing to list the name and address of the legal
14 entity that is the employer; failing to list the inclusive dates of the period for which employees
15 were paid; and/or failing to state all hours worked as a result of not recording or stating the
16 hours they worked off-the-clock.

17 112. California Labor Code section 1198 provides that the maximum hours of work
18 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
19 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
20 employment of any employees for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
22 Wage Order, employers are required to keep accurate time records showing when the
23 employee begins and ends each work period and meal period. During the relevant time
24 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
25 and meal period start and stop times for Plaintiff and Subclass members, in violation of
26 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
27 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
28 periods were taken regardless of if or when meal periods were actually taken, and thereby

failed to keep accurate records of meal start and end times for Plaintiff and Subclass members. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

113. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

114. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SEVENTH CAUSE OF ACTION

**Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination
(Against all Defendants)**

115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

116. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time pay, that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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

118. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premium wages; and reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

119. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

EIGHTH CAUSE OF ACTION

**Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)**

120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

121. This cause of action is dependent upon, and wholly derivative of, the overtime wages; minimum wages; meal, rest, and recovery period premium wages, and/or reporting time pay that were not timely paid to Plaintiff and those class members.

122. At all times relevant herein set forth, Labor Code section 204 provides that all

1 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
2 days, inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
4 the month during which the labor was performed.

5 123. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned by any person in any employment between the sixteenth (16th) and the last day,
7 inclusive, of any calendar month, other than those wages due upon termination of an
8 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
9 month.

10 124. At all times relevant herein, Labor Code section 204 provides that all wages
11 earned for labor in excess of the normal work period shall be paid no later than the payday for
12 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
13 204 provides that the requirements of this section are deemed satisfied by the payment of
14 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
15 seven (7) calendar days following the close of the payroll period.

16 125. During the relevant time period, Defendants willfully failed to pay Plaintiff and
17 class members all wages due including, but not limited to, overtime wages; minimum wages;
18 meal, rest, and recovery period premium wages; and/or reporting time pay, within the time
19 periods specified by California Labor Code section 204.

20 126. Defendants' failure to pay Plaintiff and class members all wages due violates
21 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
22 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

23 **NINTH CAUSE OF ACTION**

24 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
25 **11070 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
26 **(Against all Defendants)**

27 127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 128. California Labor Code section 1198 dictates that no employer may employ an
2 employee under conditions of labor that are prohibited by the applicable IWC wage order.
3 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
4 fixed by the commission shall be the . . . standard conditions of labor for employees. The
5 employment of any employee . . . under conditions of labor prohibited by the order is
6 unlawful.”

7 129. The applicable IWC wage order, California Code of Regulations, Title 8,
8 section 11070(5)(A), provides that “[e]ach workday an employee is required to report for
9 work and does report, but is not put to work or is furnished less than half said employee’s
10 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
11 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
12 employee’s regular rate of pay, which shall not be less than the minimum wage.”

13 130. During the relevant time period, Defendants violated California Labor Code
14 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
15 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
16 work for their scheduled shift but were put to work for less than half of the regularly
17 scheduled day’s work.

18 131. Defendants had a company-wide practice of sending Plaintiff and class
19 members home early from their shifts, including before they had worked at least half of their
20 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
21 For example, on several occasions, Plaintiff reported to work for his scheduled shift, but was
22 sent home by Defendants’ management immediately before clocking in or within the first hour
23 after clocking in because the computer network was down. Although Plaintiff and class
24 members would report to work based on the schedule that Defendants provided to them,
25 Defendants would send them home before they had worked at least half of their scheduled
26 shifts without giving them reporting time pay.

27 132. Accordingly, Plaintiff and class members were not properly compensated with
28 reporting time pay in violation of California Labor Code section 1198.

1 **TENTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
3 **(Against all Defendants)**

4 133. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 134. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or
12 equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage provided herein may be
15 required to provide and maintain hand tools and equipment customarily required by the trade
16 or craft."

17 135. First, Defendants, on a company-wide basis, required that Plaintiff and class
18 members use their own personal cellular phones and/or cellular data to carry out their job
19 duties, but failed to reimburse them for the costs of their work-related cellular phone
20 expenses. For example, Plaintiff and class members were required to use their personal
21 cellular phones to complete their work-related tasks, such as communicating with clients to
22 facilitate sales. Although Defendants required Plaintiff and class members to utilize their
23 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
24 fully reimburse them for this cost.

25 136. Second, Defendants required Plaintiff and class members to report to work in
26 clean and presentable uniforms, including uniform shirts bearing the company logo on the
27 front and back, on a daily basis, but failed to provide Plaintiff and class members with an
28 adequate number of uniform shirts in relation to their scheduled shifts and for the tasks they

1 were required to perform. This forced Plaintiff and class members to clean their uniforms
2 frequently and incur expenses for doing so. For example, due to the nature of his work,
3 Plaintiff's uniform shirts would become dirty with grime such that he was unable to mix these
4 clothes in with his other laundry. As a result, he had to wash his uniform items frequently and
5 separately from any other items, thus incurring additional utility and laundry expenses.

6 137. Third, Defendants, on a company-wide basis, mandated that Plaintiff and class
7 members purchase special safety shoes such as steel-toed boots, which they were required to
8 wear while working. Plaintiff purchased steel-toed boots, at a cost of approximately \$270.00
9 a pair, every six months, to wear during the performance of his duties, but was not reimbursed
10 for these costs. Moreover, Defendants required Plaintiff and class members to wear face
11 masks for respiratory protection while performing certain duties, such as operating the saw,
12 but failed to provide them with adequate safety equipment. Additionally, due to COVID-19,
13 Defendants required Plaintiff and class members to wear face masks at all times, but similarly
14 failed to provide them with face masks. Accordingly, Plaintiff spent \$50.00 on a respiratory
15 mask and at least \$50.00 for replacement filters, and was not reimbursed for these costs.

16 138. Defendants could have provided Plaintiff and class members with the actual
17 tools for use on the job, such as company phones, adequate number of uniforms and/or
18 laundering services, steel-toed boots, and respiratory protection and/or face masks. Or,
19 Defendants could have fully reimbursed employees for their cellular phone expenses;
20 laundering expenses; and expenses for boots, respiratory protection, and/or face masks.
21 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
22 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

23 139. Defendants' company-wide policy and/or practice of passing on their operating
24 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
25 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
26 business-related expenses and costs.

27 140. Plaintiff and class members are entitled to recover from Defendants their
28 business-related expenses incurred during the course and scope of their employment, plus

1 interest.

2 **ELEVENTH CAUSE OF ACTION**

3 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

4 **(Against all Defendants)**

5 141. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 142. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
8 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
9 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
10 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
11 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
12 violations of those Labor Code sections not found in section 2699.5, including sections 516,
13 1182.12, 6401, and 6403.

14 143. Defendants’ conduct, as alleged herein, violates numerous sections of the
15 California Labor Code, including, but not limited to, the following:

- 16 (f) Violation of Labor Code sections 510, 1198, and the applicable IWC
17 Wage Order for Defendants’ failure to compensate Plaintiff and other
18 aggrieved employees with all required overtime pay and failure to
19 properly calculate the overtime rates paid to other aggrieved employees,
20 as alleged herein;
- 21 (g) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
22 and the applicable IWC Wage Order for Defendants’ failure to
23 compensate Plaintiff and other aggrieved employees with at least
24 minimum wages for all hours worked, as alleged herein;
- 25 (h) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
26 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
27 and other aggrieved employees with meal periods, as alleged herein;
- 28 (i) Violation of Labor Code sections 226.7, 516, 1198, and the applicable

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- IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (j) Violation of Labor Code sections 226.7, 516, 1198, and the applicable General Industry Safety Order for failure to provide Plaintiff and other aggrieved employees with recovery periods, as alleged herein;
 - (k) Violation of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
 - (l) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
 - (m) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
 - (n) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
 - (o) Violation of Labor Code section 222.5 for failure to pay for costs of mandatory physical examinations and/or drug testing, as set forth below;
 - (p) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay, as alleged herein;
 - (q) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay split-shift premiums, as set forth below;
 - (r) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
 - (s) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, as set forth below.

1 144. At all relevant times herein, California Labor Code section 222.5 requires
2 employers to pay for the costs an employee incurs for obtaining any required medical or
3 physical examination.

4 145. At all times relevant herein, Defendants implemented, on a company-wide
5 basis, an employer-imposed requirement that other aggrieved employees undergo mandatory
6 drug testing and/or physical examinations, but required them to do so at their own expense.
7 Defendants had a company-wide policy requiring that other aggrieved employees travel to a
8 specified medical facility using their own personal vehicles to undergo drug testing and/or
9 physical examinations. At all times, Defendants were in control of scheduling the date and
10 time for the testing and/or examinations, selecting the provider/facility where the testing
11 and/or examinations were to take place, and determining the scope of the testing and/or
12 examinations. However, Defendants did not compensate other aggrieved employees for the
13 time they spent traveling to and from the medical facilities, for the time they spent undergoing
14 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
15 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
16 paying for all costs other aggrieved employees incurred obtaining mandatory drug testing
17 and/or physical examinations is in violation of California Labor Code section 222.5. Other
18 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
19 sections 2699(a), (f), and (g).

20 146. California Labor Code section 1198 provides that no employer may employ an
21 employee under conditions of labor that are prohibited by the applicable IWC wage order.
22 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
23 fixed by the commission shall be the . . . standard conditions of labor for employees. The
24 employment of any employee . . . under conditions of labor prohibited by the order is
25 unlawful.”

26 147. California Code of Regulations, Title 8, section 11070(4)(C) provides that,
27 “When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
28 in addition to the minimum wage for that workday, except when the employee resides at the

1 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a
2 work schedule, which is interrupted by non-paid non-working periods established by the
3 employer, other than bona fide rest or meal periods.”

4 148. Defendants willfully violated California Labor Code section 1198 and
5 California Code of Regulations, Title 8, section 11070(4)(C), because Defendants failed to
6 pay Plaintiff and other aggrieved employees a split-shift premium when they returned to work
7 for an additional shift in the same day, after having been clocked out for more than an hour.
8 For instance, Plaintiff was sometimes required to work the first five (5) hours of an eight (8)
9 hour shift in the morning, and then was told to clock out for several hours before returning to
10 work in the late afternoon and/or evening to assist with preparing for seasonal events. When
11 this occurred, Defendants did not always pay Plaintiff and other aggrieved employees an
12 additional hour at minimum wage. Accordingly, Defendants required Plaintiff and other
13 aggrieved employees to work split shifts but failed to pay them an additional hour at minimum
14 wage, in violation of California Labor Code section 1198.

15 149. Defendants’ failure to provide Plaintiff and other aggrieved employees with
16 split-shift pay when they returned to work for an additional shift in the same day, after having
17 been clocked out for more than an hour, violates California Labor Code section 1198 and
18 California Code of Regulations Title 8, Section 11070(4)(C). Plaintiff and other aggrieved
19 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 2699(a), (f), and (g).

21 150. At all times herein set forth, California Labor Code section 6401 provides that
22 employers must furnish and use safety devices and safeguards, and adopt and use practices,
23 means, methods, operations, and processes which are reasonably adequate to render the
24 employment and place of employment safe and healthy. California Labor Code Section 6401
25 further provides that an employer must do everything reasonably necessary to protect the life,
26 safety and health of its employees. California Labor Code section 6403(a) requires that
27 employers provide and use safety devices and safeguards reasonably adequate to render the
28 employment and place of employment safe.

1 151. Defendants, on a company-wide basis, failed to provide Plaintiff and other
2 aggrieved employees with personal protective equipment, such as steel-toed boots, respiratory
3 devices, and/or face masks, to keep them safe in the workplace. Despite the fact that
4 Defendants required employees to wear certain personal protective equipment, including steel-
5 toed boots, respiratory devices, and/or face masks while operating heavy machinery and/or
6 interacting face-to-face with customers, Defendants failed to provide such reasonably
7 necessary equipment to Plaintiff and other aggrieved employees to keep them safe.

8 152. Defendants' failure to provide Plaintiff and other aggrieved employees with
9 safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.
10 Plaintiff and other aggrieved employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **TWELFTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

14 **Unlawful Business Practices**

15 **(Against all Defendants)**

16 153. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 154. Defendants are "persons" as defined by California Business & Professions
19 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
20 and/or associations.

21 155. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
23 suffered injury in fact and has lost money as a result of Defendants' unlawful business
24 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
25 meaning of Code of Civil Procedure section 1021.5.

26 156. Defendants' activities, as alleged herein, are violations of California law, and
27 constitute unlawful business acts and practices in violation of California Business &
28 Professions Code sections 17200, *et seq.*

1 157. A violation of California Business & Professions Code sections 17200, *et seq.*
2 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
3 policies and practices have violated state law in at least the following respects:

- 4 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
5 class members, to work overtime without paying them proper
6 compensation in violation of California Labor Code sections 510 and
7 1198 and the applicable IWC Wage Order, and paying Plaintiff and
8 class members overtime at a lower rate than required by law by failing
9 to properly calculate the regular rate of pay for purposes of overtime as
10 alleged herein;
- 11 (b) Failing to pay at least minimum wage to Plaintiff and class members in
12 violation of California Labor Code sections 1182.12, 1194, 1197,
13 1197.1, and 1198 and the applicable IWC Wage Order, as alleged
14 herein;
- 15 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
16 members in violation of California Labor Code sections 226.7, 512(a),
17 516, 1198, and the applicable IWC Wage Order, as alleged herein;
- 18 (d) Failing to authorize and permit Plaintiff and class members to take
19 uninterrupted rest periods in violation of California Labor Code sections
20 226.7, 516, 1198, and the applicable IWC Wage Order, as alleged
21 herein;
- 22 (e) Failing to provide recovery periods to Plaintiff and class members in
23 violation of Labor Code sections 226.7 and 1198, Calif. Code of Reg.
24 Title 8 section 3395, and the applicable General Industry Safety Order,
25 as alleged herein;
- 26 (f) Failing to provide Plaintiff and class members with accurate wage
27 statements and failing to maintain accurate payroll records in violation
28 of California Labor Code sections 226(a), 1174(d), 1198, and the

- 1 applicable IWC Wage Order, as alleged herein;
- 2 (g) Failing timely to pay all earned wages to Plaintiff and class members in
- 3 violation of California Labor Code section 204 and the applicable IWC
- 4 Wage Order, as alleged herein;
- 5 (h) Failing to pay reporting time pay in violation of California Labor Code
- 6 section 1198 and the applicable Industrial Welfare Commission Order,
- 7 as alleged herein;
- 8 (i) Failing to pay Plaintiff and class members a split-shift premium wage of
- 9 an additional hour of pay at the minimum wage, when they returned to
- 10 work for an additional shift in the same day, after having been clocked
- 11 out for more than an hour, in violation of California Labor Code section
- 12 1198 and the application IWC Wage Order, as set forth below;
- 13 (j) Failing to reimburse Plaintiff and class members for all business
- 14 expenses necessarily incurred in violation of California Labor Code
- 15 sections 2802, as alleged herein; and
- 16 (k) Failing to provide Plaintiff and class members with safety devices and
- 17 safeguards in violation of California Labor Code sections 6401 and
- 18 6403, as set forth below.

19 158. At all times relevant herein, Labor Code section 1198 provides that no

20 employer may employ an employee under conditions of labor that are prohibited by the

21 applicable IWC wage order. California Code of Regulations, Title 8, section 11070(4)(C)

22 provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum

23 wage shall be paid in addition to the minimum wage for that workday, except when the

24 employee resides at the place of employment.” Plaintiff and class members did not reside at

25 Defendants’ locations. California Code of Regulations, Title 8, defines a split shift as “a work

26 schedule, which is interrupted by non-paid non-working periods established by the employer,

27 other than bona fide rest or meal periods.”

28 159. Defendants violated California Labor Code section 1198 and California Code

1 of Regulations, Title 8, section 11070(4)(C), because Defendants have failed to pay Plaintiff
2 and class members a split-shift premium when they returned to work for an additional shift in
3 the same day, after having been clocked out for more than an hour. For instance, Plaintiff was
4 sometimes required to work the first five (5) hours of an eight (8) hour shift in the morning,
5 and then was told to clock out for several hours before returning to work in the late afternoon
6 and/or evening to assist with preparing for seasonal events. When this occurred, Defendants
7 did not always pay Plaintiff and class members an additional hour at minimum wage.

8 160. Accordingly, Defendants required Plaintiff and class members to work split
9 shifts but failed to pay them the split-shift premium wage in violation of California Labor
10 Code section 1198. Defendants' failure to compensate Plaintiff and class members with split-
11 shift pay when they returned to work for an additional shift in the same day, after having been
12 clocked out for more than an hour, violates California Labor Code section 1198.

13 161. At all relevant times herein, California Labor Code section 6401 provides that
14 employers must furnish and use safety devices and safeguards, and adopt and use practices,
15 means, methods, operations, and processes which are reasonably adequate to render the
16 employment and place of employment safe and healthy. California Labor Code Section 6401
17 further provides that an employer must do everything reasonably necessary to protect the life,
18 safety, and health of its employees. California Labor Code section 6403(a) requires that
19 employers provide and use safety devices and safeguards reasonably adequate to render the
20 employment and place of employment safe.

21 162. Defendants, on a company-wide basis, failed to provide Plaintiff and class
22 members with personal protective equipment, such as steel-toed boots, respiratory devices,
23 and/or face masks, to keep them safe in the workplace. Despite the fact that Defendants
24 required employees to wear certain protective equipment, including steel-toed boots,
25 respiratory devices, and/or face masks while operating heavy machinery and/or interacting
26 face-to-face with customers, Defendants failed to provide such reasonably necessary
27 equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to
28 provide Plaintiff and class members with safety devices and safeguards for the workplace

1 violates Labor Code sections 6401 and 6403.

2 163. As a result of the violations of California law herein described, Defendants
3 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
4 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
5 herein.

6 164. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
7 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
8 Defendants during a period that commences four years prior to the filing of this complaint; a
9 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
10 class members; and an award of attorneys' fees pursuant to California Code of Civil
11 Procedure section 1021.5 and other applicable laws; and an award of costs.

12 **THIRTEENTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

14 **Unfair Business Practices**

15 **(Against all Defendants)**

16 165. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 166. Defendants are "persons" as defined by California Business & Professions
19 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
20 and/or associations.

21 167. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
22 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
23 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
24 seeks to enforce important rights affecting the public interest within the meaning of Code of
25 Civil Procedure section 1021.5.

26 168. Defendants' activities, namely Defendants' company-wide practice and/or
27 policy of not paying Plaintiff and class members all meal and rest period premium wages due
28 to them under Labor Code section 226.7, deprived Plaintiff and class members of the

1 compensation guarantee and enhanced enforcement implemented by section 226.7. The
2 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
3 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
4 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
5 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
6 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
7 unfair business practice in violation of California Business & Professions Code sections
8 17200, *et seq.* (Id.)

9 169. A violation of California Business & Professions Code sections 17200, *et seq.*
10 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
11 and practices have violated the spirit of California’s meal and rest period laws and constitute
12 acts against the public policy behind these laws.

13 170. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
14 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
15 benefits implemented by section 226.7 withheld and retained by Defendants during a period
16 that commences four years prior to the filing of this complaint; a permanent injunction
17 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
18 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
19 Procedure section 1021.5 and other applicable laws; and an award of costs.

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

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

25 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
26 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
27 reserves the right to amend his prayer for relief to seek a different amount.
28

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;
11. For general unpaid wages and such general and special damages as may be appropriate;
12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
14. For liquidated damages pursuant to California Labor Code section 1194.2; and
15. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Third Cause of Action**

3 16. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
5 willfully failing to provide all meal periods to Plaintiff and class members;

6 17. That the Court make an award to the Plaintiff and class members of one (1)
7 hour of pay at each employee's regular rate of pay for each workday that a meal period was
8 not provided;

9 18. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 19. For premiums pursuant to California Labor Code section 226.7(c);

12 20. For pre-judgment interest on any unpaid meal period premiums from the date
13 such amounts were due, or as otherwise provided by law;

14 21. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 22. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Fourth Cause of Action**

19 23. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
21 failing to authorize and permit Plaintiff and class members to take all rest periods;

22 24. That the Court make an award to the Plaintiff and class members of one (1) hour
23 of pay at each employee's regular rate of pay for each workday that a rest period was not
24 authorized and permitted;

25 25. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 26. For premiums pursuant to California Labor Code section 226.7(c);

28 27. For pre-judgment interest on any unpaid rest period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 28. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 29. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fifth Cause of Action**

7 30. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 1198 and applicable General Industry Safety Orders by
9 willfully failing to provide all recovery periods to Plaintiff and class members;

10 31. That the Court make an award to the Plaintiff and class members of one (1) hour
11 of pay at each employee's regular rate of pay for each workday that a recovery period was not
12 provided;

13 32. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 33. For premiums pursuant to California Labor Code section 226.7(b);

16 34. For pre-judgment interest on any unpaid recovery period premiums from the
17 date such amounts were due, or as otherwise provided by law;

18 35. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 36. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Sixth Cause of Action**

23 37. That the Court declare, adjudge and decree that Defendants violated the
24 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
25 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
26 wage statements thereto;

27 38. For all actual, consequential, and incidental losses and damages, according to
28 proof;

8 43. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;
10 meal, rest, and recovery period premiums; and/or reporting time pay, owed at the time of
11 termination of the employment of Plaintiff and other terminated class members;

44. For all actual, consequential and incidental losses and damages, according to
proof;

45. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

46. For pre-judgment interest on any unpaid wages from the date such amounts
were due, or as otherwise provided by law;

47. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

20 48. For such other and further relief as the Court may deem equitable and
21 appropriate.

49. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay during their employment;

27 50. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 51. For statutory penalties according to proof pursuant to California Labor Code
2 section 210;

3 52. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 53. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 54. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Ninth Cause of Action**

10 55. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A) by
12 failing to provide Plaintiff and class members with reporting time pay;

13 56. For all actual, consequential and incidental losses and damages, according to
14 proof;

15 57. For pre-judgment interest on any unpaid wages from the date such amounts
16 were due, or as otherwise provided by law; and

17 58. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Tenth Cause of Action**

20 59. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
22 related expenses and costs incurred by Plaintiff and class members;

23 60. For unpaid business-related expenses and such general and special damages as
24 may be appropriate;

25 61. For pre-judgment interest on any unpaid business-related expenses from the
26 date such amounts were due, or as otherwise provided by law;

27 62. For all actual, consequential, and incidental losses and damages, according to
28 proof;

1 63. For attorneys' fees and costs pursuant to California Labor Code
2 section 2802(c), or as otherwise provided by law; and

3 64. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Eleventh Cause of Action**

6 65. That the Court declare, adjudge and decree that Defendants violated the
7 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
8 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
9 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
10 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
11 permit all rest periods); 226.7, 516, and 1198 (by failing to provide heat recovery periods);
12 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
13 accurate payroll records); 201, 202, and 203 (by failing to timely pay all earned wages upon
14 termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by
15 failing to pay the costs of mandatory physical examinations and/or drug testing); 1198 (by
16 failing to provide reporting time pay); 1198 (by failing to pay split-shift premiums); 2802 (by
17 failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety
18 devices and safeguards);

19 66. For civil penalties pursuant to the California Labor Code, including sections
20 256, 226.3, 558, 1174.5, 1197.1, 2699(a) and 2699(f)-(g), 2699.3(a) and 2699.3(c) and 2699.5, for
21 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246,
22 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

23 67. For attorneys' fees and costs pursuant to California Labor Code section
24 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
25 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
26 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

27 68. For pre-judgment and post-judgment interest as provided by law; and

28 69. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Twelfth Cause of Action**

3 70. That the Court declare, adjudge and decree that Defendants' conduct of failing
4 to provide Plaintiff and class members all overtime wages due to them, Plaintiff and class
5 members all minimum wages due to them, failing to provide Plaintiff and class members all
6 meal periods, failing to authorize and permit Plaintiff and class members to take all rest
7 periods, failing to provide Plaintiff and class members all recovery periods, failing to provide
8 Plaintiff and class members accurate and complete wage statements, failing to maintain
9 accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and
10 class members all earned wages during employment, failing to pay Plaintiff and class
11 members reporting time pay, failing to properly compensate Plaintiff and class members for
12 split shifts, failing to reimburse Plaintiff and class members for business-related expenses, and
13 failing to provide Plaintiff and class members with safety devices and safeguards, constitutes
14 an unlawful business practice in violation of California Business and Professions Code
15 sections 17200, *et seq.*;

16 71. For restitution of unpaid wages to Plaintiff and all class members and
17 prejudgment interest from the day such amounts were due and payable;

18 72. For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violations of California Business & Professions Code sections,
21 17200, *et seq.*;

22 73. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5; and

24 74. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Thirteenth Cause of Action**

27 75. That the Court declare, adjudge and decree that Defendants' conduct of denying
28 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes

1 an unfair business practice in violation of California Business and Professions Code sections
2 17200, *et seq.*;

3 76. For restitution of the statutory benefits under section 226.7 unfairly withheld
4 from Plaintiff and class members and prejudgment interest from the day such amounts were
5 due and payable;

6 77. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections
9 17200, *et seq.*;

10 78. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5;

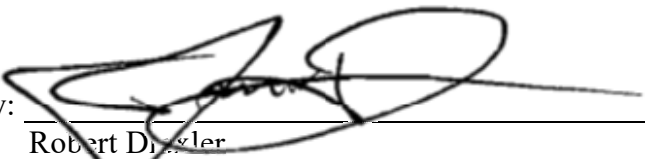
12 79. For pre-judgment and post-judgment interest as provided by law; and

13 80. For such other and further relief as the Court may deem equitable and
14 appropriate.

15
16 Dated: September 2, 2021

Respectfully submitted,

Capstone Law APC

17
18
19 By: 

Robert D. Dwyler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Le'Roi Lopez

Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
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March 4, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Le'Roi Lopez v. Big Creek Lumber Company, et al.*

Dear PAGA Administrator:

This office represents Le'Roi Lopez in connection with his claims under the California Labor Code. Mr. Lopez was an employee of BIG CREEK LUMBER COMPANY and/or THE BIG CREEK MANAGEMENT COMPANY. For the purpose of this letter, Mr. Lopez collectively refers to these entities as "BIG CREEK").

The employers may be contacted directly at the addresses below:

BIG CREEK LUMBER COMPANY
3564 HIGHWAY 1
DAVENPORT CA 95017

THE BIG CREEK MANAGEMENT COMPANY
3564 HWY 1
DAVENPORT CA 95017

Mr. Lopez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Lopez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BIG CREEK as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BIG CREEK employed Mr. Lopez as an hourly paid, non-exempt employee from approximately March 2017 to July 2020. Mr. Lopez worked for BIG CREEK as a Yard Help and Customer Service Representative at its location in Atwater, California. During his employment, Mr. Lopez typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Mr. Lopez's employment with BIG CREEK ended, he earned approximately \$16.00 per hour. His job duties included, without limitation, providing customer service, receiving materials delivered to the yard, speaking with vendors to assist with sales, creating sales reports, unloading the rail cart, preparing orders, and operating a forklift and saw.

BIG CREEK committed one or more of the following Labor Code violations against Mr. Lopez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

BIG CREEK’s Company-Wide and Uniform Payroll and HR Practices

BIG CREEK LUMBER COMPANY and THE BIG CREEK MANAGEMENT COMPANY are California corporations. Together, BIG CREEK operates five retail lumber yards, a sawmill, a wholesale division, a forestry department, and a logging operation. Upon information and belief, BIG CREEK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Davenport, California, for all non-exempt, hourly paid employees working for BIG CREEK in California, including Mr. Lopez and other aggrieved employees. At all relevant times, BIG CREEK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lopez and other aggrieved employees, regardless of its location or position.

Upon information and belief, BIG CREEK maintains a centralized Payroll department at its corporate headquarters in Davenport, California, which processes payroll for all non-exempt, hourly paid employees working for BIG CREEK in California, including Mr. Lopez and other aggrieved employees. Further, BIG CREEK issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Lopez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BIG CREEK utilized the same methods and formulas when calculating wages due to Mr. Lopez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

BIG CREEK willfully failed to pay all overtime wages owed to Mr. Lopez and other aggrieved employees. During the relevant time period, Mr. Lopez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Lopez’s experience and counsel’s review of those records currently available relating to Mr. Lopez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Lopez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, BIG CREEK had a policy and/or practice of discouraging and impeding Mr. Lopez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with BIG CREEK's practice of understaffing and assignment of heavy workloads (*see infra*), led Mr. Lopez and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Mr. Lopez typically spent 5-15 minutes reviewing and responding to work orders that were assigned to him before he could clock in for his shift. After clocking out for his shift, Mr. Lopez typically spent 5-10 minutes helping customers who stopped him for assistance because, per BIG CREEK's policies, employees were required to assist customers immediately or locate an available associate to help.

Moreover, on information and belief, BIG CREEK engaged in a policy and/or practice of altering time records at the discretion of management. For example, BIG CREEK's management would adjust Mr. Lopez's and other aggrieved employees' time records and delete time recorded before and/or after their scheduled shifts to avoid having to pay overtime wages. As a result of BIG CREEK's policy and/or practice, Mr. Lopez and other aggrieved employees were not paid overtime wages for all overtime hours incurred. For example, Mr. Lopez would periodically clock in up to 30 minutes before his scheduled shift start time, but was only paid for his scheduled shift hours.

Second, BIG CREEK had, and continues to have, a company-wide policy and/or practice of requiring Mr. Lopez and other aggrieved employees to perform tasks off-the-clock, such as responding to phone communications from customers and preparing for seasonal events. For example, Mr. Lopez and other aggrieved employees were required to use their personal cellular phones to complete their work-related duties, such as communicating with clients to respond to customer inquiries and effectuate sales. Mr. Lopez spent 15-45 minutes each week off-the-clock responding to phone calls and text messages from clients. As a further example, during seasonal events, BIG CREEK's managers instructed Mr. Lopez and other aggrieved employees not to clock in, saying they would manually enter Mr. Lopez's and other aggrieved employees' hours worked, but then failed to do so. As a result, Mr. Lopez and other aggrieved employees worked off-the-clock preparing for these seasonal events at least several times per year. BIG CREEK failed to track this time Mr. Lopez and other aggrieved employees spent working off-the-clock, and thus, Mr. Lopez and other aggrieved employees received no compensation for this time.

Third, as stated, BIG CREEK had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Mr. Lopez and other aggrieved employees with adequate meal period coverage. Moreover, BIG CREEK also had a company-wide policy and/or practice of requiring Mr. Lopez and other aggrieved employees to carry company-issued radios and respond to calls at all times during their shifts. BIG CREEK required that Mr. Lopez and other aggrieved employees be available via radio at all times, including during their unpaid meal periods. Thus, Mr. Lopez and other aggrieved employees had their meal periods interrupted and/or had to forgo their meal periods altogether, in order to handle their workloads. For example, on several occasions, Mr. Lopez's meal periods were interrupted or cut short by 5-10 minutes in order to assist customers or respond to his radio because there were no other employees available to complete these duties.

BIG CREEK knew or should have known that as a result of these company-wide practices and/or policies, Mr. Lopez and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Lopez and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, BIG CREEK did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BIG CREEK paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BIG CREEK failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BIG CREEK failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, BIG CREEK paid other aggrieved employees nondiscretionary bonuses based on a profit-sharing formula, which were listed on other aggrieved employees' wage statements as "Bonus." During pay periods that other aggrieved employees were paid overtime wages, BIG CREEK failed to incorporate the incentive pay and/or nondiscretionary bonuses into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, BIG CREEK paid other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. BIG CREEK's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to other aggrieved employees on a company-wide basis.

Therefore, Mr. Lopez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As stated above, due to BIG CREEK's restrictions on overtime accrual, BIG CREEK systematically failed to pay Mr. Lopez and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to BIG CREEK's uniform practice of understaffing and assignment of heavy workloads and requirement that employees carry and respond to their radios at all times, Mr. Lopez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, BIG CREEK maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time to undergo mandatory drug testing and/or physical examinations. At all times, BIG CREEK was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider or facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug testing and/or physical examinations. BIG CREEK gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of BIG CREEK. However, BIG CREEK did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, BIG CREEK did not pay for all hours worked by Mr. Lopez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BIG CREEK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, BIG CREEK regularly failed to pay at least minimum wages to Mr. Lopez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Lopez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, BIG CREEK had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including meeting daily deadlines for lumber orders and deliveries. Further, BIG CREEK had a company-wide practice of failing to adhere to a schedule of meal periods, resulting in Mr. Lopez and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet deadlines. Additionally, as described above, BIG CREEK's requirement that employees carry radios at all times also prevented Mr. Lopez and other aggrieved employees from taking compliant meal periods.

BIG CREEK's practices and policies prevented Mr. Lopez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Lopez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, at times, Mr. Lopez took his meal periods late, after the end of his sixth hour of work, in order to finish his assigned duties, such as assisting customers or filling orders. Mr. Lopez's meal periods were also cut short or interrupted by 5-10 minutes on several occasions when he was required to assist customers due to a lack of coverage.

Moreover, because BIG CREEK frowned upon employees accruing meal period penalties, BIG CREEK's management would adjust Mr. Lopez's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by BIG CREEK. For example, Mr. Lopez was required to notify his supervisor if his meal period was going to be late so that his supervisor could manually adjust the time entries to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

In addition, during the relevant time period, Mr. Lopez and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. During his employment, Mr. Lopez was never given a second meal period even though he typically worked shifts of ten (10) hours or more during the summer months. Mr. Lopez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

BIG CREEK knew or should have known that as a result of its policies and practices, that Mr. Lopez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. BIG CREEK further knew or should have known that it did not pay Mr. Lopez and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, BIG CREEK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Lopez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BIG CREEK did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BIG CREEK did not pay other aggrieved employees at the correct rate of pay for premiums because BIG CREEK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BIG CREEK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lopez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, BIG CREEK regularly failed to authorize and permit Mr. Lopez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BIG CREEK's company-wide policy and/or practice of understaffing and assigning heavy workloads prevented Mr. Lopez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Moreover, as stated, BIG CREEK also had a company-wide policy and/or practice of requiring employees to carry company-issued radios and respond to calls at all times during their shifts, including rest periods. BIG CREEK also failed to schedule rest periods, which, coupled with BIG CREEK's failure to provide adequate rest period coverage, further led to Mr. Lopez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, BIG CREEK maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Lopez and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Lopez and other aggrieved employees were restricted from leaving BIG CREEK's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, BIG CREEK effectively maintained control over Mr. Lopez and other aggrieved employees during rest periods.

As a result, Mr. Lopez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Lopez missed all of his rest periods because of the heavy workload and lack of rest period coverage. Additionally, Mr. Lopez did not receive a third rest period when he worked shifts in excess of 10 hours.

BIG CREEK also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that BIG CREEK did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BIG CREEK did not pay other aggrieved employees at the correct rate of pay

for premiums because BIG CREEK failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BIG CREEK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lopez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, BIG CREEK violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because BIG CREEK failed to provide Mr. Lopez and other aggrieved employees with recovery periods. For example, Mr. Lopez was not provided a shaded area for recovery and was not permitted to take recovery periods in a shaded area while working outside in the lumber yard.

BIG CREEK also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Alternatively, to the extent that BIG CREEK did pay recovery period premiums to Mr. Lopez and other aggrieved employees, it did so at the incorrect rates. Because BIG CREEK did not properly calculate Mr. Lopez's and other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for recovery period violations were also paid at an incorrect rate and resulted in an underpayment of recovery period premiums.

Accordingly, BIG CREEK failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lopez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. BIG CREEK has not provided Mr. Lopez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BIG CREEK has knowingly and intentionally provided Mr. Lopez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BIG CREEK issued uniform wage statements to Mr. Lopez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, BIG CREEK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because BIG CREEK did not record the time Mr. Lopez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), BIG CREEK did not list the correct amount of gross wages and net wages earned by Mr. Lopez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BIG CREEK failed to accurately list the total number of hours worked by Mr. Lopez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because BIG CREEK did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, BIG CREEK did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BIG CREEK also failed to list the correct amount of net wages in violation of section 226(a)(5). BIG CREEK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BIG CREEK willfully failed to maintain accurate payroll records for Mr. Lopez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BIG CREEK failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Lopez and other aggrieved employees, in violation of section 1198. As stated, BIG CREEK engaged in a company-wide practice and/or policy of falsifying Mr. Lopez’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Lopez and other aggrieved employees. Furthermore, in light of BIG CREEK’s failure to provide Mr. Lopez and other aggrieved employees with second 30-minute meal periods to which they were entitled, BIG CREEK kept no records of meal start and end times for second meal periods.

Because BIG CREEK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lopez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Lopez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BIG CREEK failed to pay Mr. Lopez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

BIG CREEK willfully failed to pay Mr. Lopez and other aggrieved employees who are no longer employed by BIG CREEK all their earned wages, including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving BIG CREEK's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BIG CREEK implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, BIG CREEK had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, BIG CREEK was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, BIG CREEK did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from

the medical facilities. BIG CREEK's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

BIG CREEK violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because BIG CREEK failed to pay Mr. Lopez and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. BIG CREEK had a company-wide practice of sending Mr. Lopez and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Lopez and other aggrieved employees for half of their scheduled shift. For example, on several occasions, Mr. Lopez reported to work for his scheduled shift, but was sent home by BIG CREEK's management immediately before clocking in or within the first hour after clocking in because the computer network was down. Although Mr. Lopez and other aggrieved employees reported to work based on the schedule that BIG CREEK provided to them, BIG CREEK would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Lopez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Lopez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code

section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

BIG CREEK willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because BIG CREEK failed to pay Mr. Lopez and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, Mr. Lopez was sometimes required to work the first five (5) hours of an eight (8) hour shift in the morning, and then was told to clock out for several hours before returning to work in the late afternoon and/or evening to assist with preparing for seasonal events. When this occurred, BIG CREEK did not always pay Mr. Lopez and other aggrieved employees an additional hour at minimum wage. Accordingly, BIG CREEK required Mr. Lopez and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

BIG CREEK’s failure to provide Mr. Lopez and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11070(4)(C). Mr. Lopez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, BIG CREEK, on a company-wide basis, required that Mr. Lopez and other aggrieved employees use their own personal cellular phones and cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Lopez and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with clients to facilitate sales. Although BIG CREEK required Mr. Lopez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, BIG CREEK failed to fully reimburse them for this cost.

Second, during the relevant time period, BIG CREEK had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, BIG CREEK was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. BIG CREEK gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of BIG CREEK. Although BIG CREEK required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, BIG CREEK never reimbursed them for their travel expenses.

Third, BIG CREEK required Mr. Lopez and other aggrieved employees to report to work in clean and presentable uniforms, including uniform shirts bearing the company logo on the front and back, on a daily basis, but failed to provide Mr. Lopez and other aggrieved employees with an adequate number of uniform shirts in relation to their scheduled shifts and for the tasks they were required to perform. This forced Mr. Lopez and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, due to the nature of his work, Mr. Lopez's uniform shirts would become dirty with grime such that he was unable to mix these clothes in with his other laundry. As a result, he had to wash his uniform items frequently and separately from any other items, thus incurring additional utility and laundry expenses.

Fourth, BIG CREEK, on a company-wide basis, mandated that Mr. Lopez and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while working. Plaintiff purchased steel-toed boots, at a cost of approximately \$270.00 a pair, every six months, to wear during the performance of his duties, but was not reimbursed for these costs. Moreover, BIG CREEK required Mr. Lopez and other aggrieved employees to wear face masks for respiratory protection while performing certain duties, such as operating the saw, but failed to provide them with adequate safety equipment. Additionally, due to COVID-19, BIG CREEK required Mr. Lopez and other aggrieved employees to wear face masks at all times, but similarly failed to provide them with face masks. Accordingly, Plaintiff spent \$50.00 on a respiratory mask and at least \$50.00 for replacement filters, and was not reimbursed for these costs.

BIG CREEK could have provided Mr. Lopez and other aggrieved employees with the actual tools required for use on the job, including company phones and vehicles, adequate number of uniforms and/or laundering services, steel-toed boots, and respiratory protection and/or face masks. Or, BIG CREEK could have reimbursed employees for their cellular phone usage; mileage and travel costs; laundering expenses; and expenses for boots, respiratory protection, and/or face masks. Instead, BIG CREEK passed these operating costs off onto Mr. Lopez and other aggrieved employees. At all relevant times, Mr. Lopez and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, BIG CREEK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

BIG CREEK, on a company-wide basis, failed to provide Mr. Lopez and other aggrieved employees with personal protective equipment, such as steel-toed boots, respiratory devices, and/or face masks, to keep them safe in the workplace. Despite the fact that BIG CREEK required employees to wear certain personal protective equipment, including steel-toed boots, respiratory devices, and/or face masks while operating heavy machinery and/or interacting face-to-face with customers, BIG CREEK failed to provide such reasonably necessary equipment to Mr. Lopez and other aggrieved employees to keep them safe.

BIG CREEK's failure to provide Mr. Lopez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Lopez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." BIG CREEK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Lopez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Lopez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Lopez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against BIG CREEK for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Lopez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: BIG CREEK LUMBER COMPANY (via U.S. Certified Mail); THE BIG CREEK
MANAGEMENT COMPANY (via U.S. Certified Mail)

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AW APC
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CA 90067



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DAVENPORT CA 95017



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2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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DAVENPORT CA 95017

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THE BIG CREEK MANAGEMENT
COMPANY
3564 HWY 1
DAVENPORT CA 95017



9590 9402 1512 5362 2713 53

2. Article Number (Transfer from service label)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On September 2, 2021, I served the within document(s) described below as:

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET SEQ.**

on the interested parties in this action as follows:

Alicia R. Kennon
Kristin A. Smith
Wood,Smith,Henning & Berman LLP
1401 Willow Pass Road, Suite 700
Concord, California 94520-7982
akennon@wshblaw.com
krsmith@wshblaw.com

- (X) **ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- () **MESSENGER:** I caused such envelope to be delivered by hand to the individuals at the address listed above via a messenger service (Prolegal).
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- () **BY E-MAIL:** Due to the National Emergency and public health orders in California related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and staff are working remotely and therefore have limited capabilities to send physical mail in the normal course of business. On this date, I personally transmitted the foregoing document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.

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

EXECUTED this document on September 2, 2021, at Los Angeles, California.



Sandy S. Acevedo