

James R. Hawkins (SBN 192925)
james@Jameshawkinsaplc.com
Christina M. Lucio (SBN 253677)
christina@Jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff GERARDO ABUNDO,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

GERARDO ABUNDO, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

AMERICAN RESIDENTIAL
SERVICES, LLC, a Delaware corporation,
and DOES 1-50, inclusive,

Defendants.

Case No. 30-2021-01190592-CU-OE-CXC

COMPLAINT

Assigned for All Purposes To:

Hon. Judge William Claster

Dept.:

CX-104

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay All Wages Owed,
including Overtime;**
- 2) **Failure to Provide Lawful Meal
Periods;**
- 3) **Failure To Authorize And Permit
Rest Periods;**
- 4) **Failure to Timely Pay Wages During
Employment;**
- 5) **Failure to Timely Pay Wages Owed
Upon Separation From Employment;**
- 6) **Failure to Furnish Accurate Itemized
Wage Statements;**
- 7) **Violation of the Unfair Competition
Law;**
- 8) **Failure to Reimburse Necessary
Expenses;**

DEMAND FOR JURY TRIAL

1 Plaintiff GERARDO ABUNDO (“Plaintiff”), an individual, assert claims against defendant
2 AMERICAN RESIDENTIAL SERVICES, LCC, a Delaware Corporation, and DOES 1-50,
3 inclusive (collectively “ARS” or “Defendant(s)”) as follows:

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-
7 exempt employees, however titled, in the State of California within four (4) years prior to the filing
8 of the Complaint in this action until the resolution of this lawsuit and whose job duties did not
9 consist of over 50% administrative, executive or professional duties (collectively referred to as the
10 “Class” or “Class Members” or “Non-Exempt Employees”). This includes without limitation all
11 HVAC employees, service technicians, repairers, installers, and other field employees.

12 2. During the “liability period,” as defined as the applicable statute of limitations for
13 each and every cause of action contained herein – i.e. Plaintiff’s claims under the Unfair
14 Competition Law is four (4) years; Plaintiff’s claims for either unpaid wages or actual damages is
15 three (3) years; and Plaintiff’s claims for statutory penalties is one (1) year from the filing of this
16 action through the present (referred to as “the liability period(s)”) – Defendants consistently
17 maintained and enforced against its Non-Exempt Employees unlawful practices and policies in
18 violation of California state wage and hour laws, including failing to lawfully and accurately pay
19 Plaintiff and Class Members for all hours worked, including minimum wages and overtime; failing
20 to lawfully provide meal and rest periods; failing to pay one hour of pay at the employee’s regular
21 rate of pay when legally mandated meal or rest periods were not lawfully provided; failing to
22 accurately pay overtime; failing to reimburse necessary expenses; failing to provide accurate
23 itemized wage statements; and failing to keep accurate records. The liability period or relevant
24 period is extended to the extent that the period is properly tolled by Emergency Rule 9.

25 3. Defendants implemented uniform policies and practices that deprived Plaintiff and
26 Class Members of earned wages, including commissions, minimum wages; straight time wages;
27 overtime wages; premium wages; failing to reimburse necessary expenses; and lawful meal and/or
28 rest breaks.

1 4. Such actions and policies, as described above and further herein, were and continue
2 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
3 members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,
4 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
5 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8,
6 section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties,
7 liquidated damages, and reasonable attorneys' fees and costs.

8 5. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
9 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to
10 pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

11 **JURISDICTION AND VENUE**

12 6. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
13 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
14 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the
15 California Superior Court and will be established according to proof at trial.

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

20 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

22 9. This Court has jurisdiction over Defendants because, upon information and belief,
23 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
24 otherwise intentionally avails itself of the California market so as to render the exercise of
25 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
26 substantial justice. Defendants have done and are doing business throughout California.

27 10. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
28 similarly situated Non-Exempt Employees within Orange County and it is believed that Defendants

1 have employed over one hundred Class Members as Non-Exempt Employees throughout the state.

2 11. The California Superior Court also has jurisdiction in this matter because the
3 individual claims of the Class Members described herein are presently believed to be under the
4 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
5 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
6 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
7 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
8 Further, there is no federal question at issue, as the issues herein are based solely on California
9 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
10 Procedure, the California Civil Code, and the California Business and Professions Code.

11 12. Venue is proper in this Court because one or more of the Defendants reside, transact
12 business, or have offices in this County, and the acts or omissions alleged herein took place in this
13 County.

14 **PARTIES**

15 13. American Residential Services, LLC, is a Delaware corporation in good standing
16 that is authorized to do business throughout the state. American Residential Services, LLC's
17 headquarters are located at 965 Ridge Lake Blvd., Suite 201, Memphis, TN 38120.

18 14. American Residential Services, LLC operates in California from numerous
19 locations providing heating, air conditioning, and plumbing services.

20 15. Plaintiff Gerardo Abundo is and during the liability period has been, a resident of
21 Corona, California.

22 16. Plaintiff was employed by defendant during the liability period as a Service
23 Technician in Irvine, CA.

24 17. Plaintiff and the members of the putative class were employed by Defendants as
25 non-exempt employees in heating and air conditioning unit services or similar related positions,
26 however titled, (the "Class Members" or "Non-Exempt Employees") during the liability period.

27 18. Whenever in this complaint reference is made to any act, deed, or conduct of
28 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through

one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

19. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

21. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

22. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage, and some Non-Exempt Employees were also paid commissions or piece rates.

23. Plaintiff and the Class Members were, and at all times pertinent hereto, have been

1 non-exempt employees within the meaning of the California Labor Code, and the implementing
2 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
3 the IWC Wage Orders and the Labor Code.

4 24. Plaintiff was employed as an hourly non-exempt employee in the position of Service
5 Technician from May 2019 through March 2020. Plaintiff provided heating and air conditioning
6 unit services in and around Orange County while based out of defendant's location in Irvine,
7 California.

8 25. The members of the putative class provided heating and air conditioning unit
9 services as employees of Defendant throughout the state of California during the liability period.

10 26. Plaintiff typically worked six days a week, averaging over 40 hours a week.

11 27. Plaintiff and Class Members were often required to remain "on call" for at least one
12 24 hour period every week.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
14 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
15 requirements of California's wage and employment laws.

16 29. All Class Members, including Plaintiff, are similarly situated in that they are all
17 subject to Defendants' uniform policies and systemic practices as specified herein.

18 30. Plaintiff and the Class Members were not properly compensated for all hours
19 worked, in part because they were frequently required to work off the clock.

20 31. Plaintiff and Class Members were not paid for time spent "on call" but only for the
21 time during which they were clocked in on a job.

22 32. In addition, the Class Members frequently worked in excess of eight (8) hours a
23 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate
24 of time and one-half the employee's regular rate of pay per hour. Plaintiff and the Class Members
25 also often worked in excess of twelve (12) hours in one day and/or over eight (8) hours on the
26 seventh day of the workweek, but were not properly paid for such time at a rate of two times the
27 employee's regular rate of pay per hour.

28 33. Class Members were regularly required to work shifts in excess of five hours

1 without being provided a lawful meal period and over ten hours in a day without being provided a
2 second lawful meal period as required by law.

3 34. Indeed, during the relevant time, as a consequence of Defendants' staffing and
4 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
5 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
6 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

7 35. On information and belief, Plaintiff and Class Members did not waive their rights
8 to meal periods under the law.

9 36. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
10 periods.

11 37. Despite the above-mentioned meal period violations, Defendants failed to
12 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
13 additional hour of pay at their regular rate as required by California law when meal periods were
14 not timely or lawfully provided in a compliant manner.

15 38. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
16 should know, knew, and/or should have known that Plaintiff and the other Class Members were
17 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
18 were not receiving such compensation.

19 39. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
20 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
21 period for every four hours worked or major fraction thereof, which is a violation of the Labor
22 Code and IWC wage order.

23 40. Defendants maintained and enforced scheduling practices, policies, and imposed
24 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
25 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
26 requisite rest periods were not timely authorized and permitted.

27 41. Moreover, Plaintiff and the Class Members were required to incur necessary
28 expenses in the discharge of their duties, including without limitation drills, screwdrivers,

1 measuring tape, and gauges, but were not reimbursed for such necessary expenses.

2 42. Despite the above-mentioned rest period violations, Defendants did not
3 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
4 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
5 and the applicable IWC wage order, for each day on which lawful rest periods were not
6 authorized and permitted.

7 43. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiff and the Class Members in part because of the above specified violations. In addition,
9 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
10 the applicable hourly rates, the number of hours worked at each rate, commissions earned, the
11 name and address of the legal entity that is the employer, gross pay and net pay figures from
12 Plaintiff and the Class Members' wage statements. Such actions were and continue to be in
13 violation of the California Labor Code and applicable IWC Wage Orders.

14 44. Employees were also not provided accurate itemized wage statements in indelible
15 format, and such documents required by Labor Code 226 were not lawfully kept by Defendants.

16 45. Defendants have also made it difficult to determine applicable rates of pay, total
17 hours worked, commission rates, and account with precision for the unlawfully withheld wages
18 and deductions due to be paid to Non-exempt Employees, including Plaintiff, during the liability
19 period because they did not implement and preserve a lawful record-keeping method to record all
20 hours worked, meal periods, and non-provided rest and meal periods owed to employees as
21 required for non-exempt employees by 29 U.S.C. section 211(c), California Labor Code section
22 226, and applicable California Wage Orders.

23 46. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
25 thereof for resignations without prior notice as the case may be) they had a duty to accurately
26 compensate Plaintiffs and Class Members for all wages owed including minimum wages, straight
27 time wages, overtime, meal and rest period premiums, and that Defendants had the financial ability
28 to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so

1 in part because of the above-specified violations.

2 47. Plaintiff and the Class Members are covered by applicable California IWC Wage
3 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
4 section 11000 *et seq.*

5
6 **CLASS ACTION ALLEGATIONS**

7 48. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
8 other person similarly situated, and thus, seeks class certification under California Code of Civil
9 Procedure §382.

10 49. All claims alleged herein arise under California law for which Plaintiff seeks relief
11 as authorized by California law.

12 50. The **proposed class** is comprised of and defined as: All persons currently or
13 formerly employed by Defendants as non-exempt employees, however titled, throughout the state
14 of California within four (4) years prior to the filing of the Complaint in this action until the
15 resolution of this lawsuit and whose job duties did not consist of over 50% administrative, executive
16 or professional duties. (hereinafter collectively referred to as the “Class” or “Class Members”).

17 51. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
18 are composed of Class Members satisfying the following definitions:

19 a. All Class Members who earned commissions or piece rates (collectively
20 **“Commissioned Employee Subclass”**);

21 b. All Class Members who were required to remain on-call (collectively **“On-**
22 **Call Subclass”**);

23 c. All Class Members who were not paid at least minimum wage for all hours
24 worked (collectively **“Minimum Wage Subclass”**);

25 d. All Class Members who were not accurately paid overtime for hours worked
26 over eight in a day or over forty in a workweek (**collectively “Overtime Subclass”**);

27 e. All Class Members who worked more than five (5) hours in a workday and
28 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and

1 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
2 thereof (hereinafter collectively referred to as the "**First Meal Period Subclass**");

3 f. All Class Members who worked more than ten (10) hours in a workday and
4 were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes,
5 and were not paid compensation of one hour premium wages at the employee's regular rate in lieu
6 thereof (hereinafter collectively referred to as the "**Second Meal Period Subclass**");

7 g. All Class Members who worked more than three and a half hours in a
8 workday and were not authorized and permitted to take a lawful net 10-minute rest period for every
9 four (4) hours or major fraction thereof worked per day and were not paid compensation of one
10 hour premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred
11 to as the "**Rest Period Subclass**");

12 h. All Class Members who did not receive all owed wages at the time of
13 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the
14 "**Waiting Time Subclass**");

15 i. All Class Members who were not provided with accurate and complete
16 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
17 **Subclass**");

18 j. All Class Members who were employed by Defendants and subject to
19 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
20 **Practices Subclass**").

21 k. All Class Members who were not reimbursed for all necessary expenditures
22 (collectively "**Indemnification Subclass**").

23 52. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
24 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
25 or if it should be deemed necessary by the Court or to further divide the Class Members into
26 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
27 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

28 53. As set forth in further detail below, this action has been brought and may properly

1 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
2 because there is a well-defined community of interest in the litigation, and the proposed Class and
3 Subclasses are easily ascertainable through Defendants' records.

4 a. Numerosity: The members of the Class and Subclasses are so numerous that
5 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
7 Class is estimated to be over a hundred individuals. Accounting for employee turnover during the
8 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants'
9 employment records would provide information as to the number and location of all Class
10 Members. Joinder of all members of the proposed Class is not practicable.

11 b. The proposed class is easily ascertainable. The number and identity of the
12 class members are determinable from Defendants' payroll records and time records for each class
13 member.

14 c. Commonality: There are common questions of law and fact as to the Class
15 and Subclasses that predominate over questions affecting only individual Class Members. These
16 common questions of law and fact include, without limitation:

17 1) Whether Defendants properly paid commissions or piece rates as required
18 by law;

19 2) Whether Defendants properly paid rest periods and other non-productive
20 time at the proper rate;

21 3) Whether Defendants were required to pay Class Members for on-call time;

22 4) Whether Defendants paid Class Members at least minimum wage for all
23 hours worked;

24 5) Whether Defendants knew or should have known that Class Members were
25 required to perform work off the clock;

26 6) Whether Defendants accurately calculated and paid all Class Members
27 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
28 hours per day and/or forty (40) hours per week;

1 7) Whether Defendants had a policy and practice of providing lawful, timely
2 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
3 Commission (“IWC”) wage order;

4 8) Whether Defendants on-duty meal periods were lawful;

5 9) Whether Defendants had a policy and practice of complying with Labor
6 Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not
7 provided;

8 10) Whether Defendants failed to authorize and permit a lawful, net 10-minute
9 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

10 11) Whether Defendants had a policy and practice of complying with Labor
11 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
12 provided;

13 12) Whether Defendants failed to timely pay all wages upon separation in
14 accordance with Labor Code sections 201-202;

15 13) Whether Defendants failed to reimburse employees for necessary expenses
16 in accordance with Labor Code section 2802;

17 14) Whether Defendants omitted required information from itemized wage
18 statements;

19 15) Whether Defendants failed to maintain accurate records of Class Members'
20 earned wages, work periods, meal periods and deductions;

21 16) Whether Defendants engaged in unfair competition in violation of section
22 17200 et seq. of the Business and Professions Code;

23 17) Whether Defendants’ conduct was willful and/or reckless;

24 18) Whether Defendants failed to provide accurate itemized wage statements by
25 failing to, among other violations, identify the total accurate number of hours worked, the
26 applicable hourly rates, the number of hours worked at each rate, and commissions earned in
27 violation of Labor Code § 226 and IWC Wage Order 7-2001; and
28

1 19) The appropriate amount of damages, restitution, and/or monetary penalties
2 resulting from Defendants' violations of California law.

3 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
4 interests of each member of the Class and Subclasses with whom he has a well-defined community
5 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
6 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which
7 would be sought by each member of the Class and/or Subclasses in separate actions. All members
8 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
9 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at
10 termination, failure to pay minimum wages, failure to reimburse necessary expenses, and failure to
11 accurately pay all wages earned including all owed premium and overtime wages, all due to
12 Defendants' policies and practices that affected each member of the Class and/or Subclasses
13 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
14 each member of the Class and/or Subclasses.

15 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
16 interests of each member of the Class and/or Subclasses with whom he has a well-defined
17 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
18 he has an obligation to make known to the Court any relationships, conflicts, or differences with
19 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
20 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
21 versed in the rules governing class action discovery, certification, litigation, and settlement and
22 experienced in handling such matters. Other former and current employees of Defendants may also
23 serve as representatives of the Class and Subclasses if needed.

24 f. Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve economies of time, effort,
26 judicial resources, and expense, which would not be achieved with separate lawsuits. The
27 prosecution of separate actions by individual members of the Class and/or Subclasses would create
28 a risk of inconsistent and/or varying adjudications with respect to the individual members of the

1 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
2 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
3 disposition of their interests through actions to which they were not parties. Thus, a class action is
4 superior to other available means for the fair and efficient adjudication of this controversy because
5 individual joinder of all Class Members is not practicable, and questions of law and fact common
6 to the Class predominate over any questions affecting only individual Class Members. Each
7 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
8 unlawful policies and practices, including Defendants' failure to provide lawful meal and rest
9 periods, failure to pay minimum wages, failure to provide accurate wage statements, failure to
10 timely pay wages at termination, failure to reimburse necessary expenses, and failure to accurately
11 pay all wages earned including all owed premium and overtime wages, all due to Defendants'
12 policies and practices that affected each member of the Class and/or Subclasses similarly. Class
13 action treatment will allow those similarly situated persons to litigate their claims in the manner
14 that is most efficient and economical for both parties and the judicial system. Plaintiff is unaware
15 of any difficulties that are likely to be encountered in the management of this action that would
16 preclude its maintenance as a class action.

17 g. Public Policy Considerations: Employers in the state of California violate
18 employment and labor laws every day. However, current employees are often afraid to assert their
19 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
20 because they believe their former employers may damage their future endeavors through negative
21 references and/or other means. The nature of this action allows for the protection of current and
22 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
23 California have a significant interest in ensuring employers comply with California's labor laws
24 and in ensuring those employers who do not are prevented from taking further advantage of their
25 employees.

26 **CLASS ACTION CLAIMS**

27 **FIRST CAUSE OF ACTION**

28 **FAILURE TO PAY ALL WAGES OWED, INCLUDING OVERTIME**

1 **(By Plaintiff and the Minimum Wage and Overtime Subclasses Against Defendants)**

2 54. Plaintiff incorporates by reference each and every paragraph above, and realleges
3 each and every allegation contained above as though fully set forth herein.

4 55. At all times relevant, Labor Code §1194 provides that any employee receiving less
5 than the legal minimum wage or the legal overtime compensation applicable to the employee is
6 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
7 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

8 56. Labor Code §1197 states: "The minimum wage for employees fixed by the
9 commission is the minimum wage to be paid to employees, and the payment of a less wage than
10 the minimum so fixed is unlawful."

11 57. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
12 hours than those fixed by the Industrial Welfare Commission is unlawful.

13 58. The IWC Wage Orders similarly require that employees be paid on the established
14 payday for the period involved, not less than the applicable minimum wage for all hours worked in
15 the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

16 59. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
17 wage orders applicable to Plaintiff's and the Class Members' employment by Defendants
18 provided that employees working for more than eight (8) hours in a day or forty (40) hours in a
19 work week are entitled to overtime compensation at the rate of one and one-half times the regular
20 rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work
21 week. An employee who works more than twelve (12) hours in a day or in excess of eight (8)
22 hours in a day on the seventh day of work in a particular work week is entitled to overtime
23 compensation at a rate of twice the regular rate of pay.

24 60. The IWC Wage Orders define "hours worked" as "the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is
26 suffered or permitted to work, whether or not required to do so."

1 61. At all times relevant, Plaintiff and Class Members consistently worked hours for
2 which they were not paid because Plaintiff and the Class Members were required to work off the
3 clock.

4 62. Plaintiff is informed and believes that Defendants and its managers were aware
5 that Plaintiff and the Class Members were working off the clock and that they should have been
6 paid for this time.

7 63. In addition, Plaintiff is informed and believes that Defendants failed to compensate
8 employees for all overtime hours worked at the proper regular rate because Defendants failed to
9 include all required forms of compensate in calculating the regular rate.

10 ///

11 64. In some instances, Plaintiff and the Class Members worked in excess of eight (8)
12 hours in a day and/or forty (40) hours in a week, and on occasion over twelve hours in a day in a
13 particular workweek without being paid all wages owed as required by law.

14 65. In addition, Plaintiff and Class Members were expected to be “on call” for 24 hour
15 periods during certain weeks for which they were no paid “on call” wages.

16 66. Plaintiff and Class Members were not paid at least minimum wage for non-
17 productive time including time spent “on call.”

18 67. Upon information and belief, Defendants knew or should have known Plaintiffs
19 and the Class Members were undercompensated.

20 68. Defendants’ failure to pay Plaintiffs and Class Members the unpaid balance of
21 wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and the applicable
22 IWC wage orders and is therefore unlawful.

23 69. Accordingly, Defendants owe Plaintiff and Class Members wages, including
24 minimum wages and overtime wages, and have failed and refused, and continue to fail and refuse,
25 to pay Plaintiffs and Class Members the wages owed.

26 70. Pursuant to Labor Code §1194, Plaintiffs and Class Members are entitled to recover
27 their unpaid compensation, as well as interest, costs, and attorneys’ fees.

28 71. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class Members

1 are entitled to “recover liquidated damages in an amount equal to the wages unlawfully unpaid
2 and interest thereon.”

3 72. Also, pursuant to Labor Code §1197.1, Plaintiff and the Class Members are
4 entitled to claim all applicable civil penalties as a direct result of Defendants’ policy and practice
5 of paying a wage less than the minimum fixed by an order of the commission.

6 73. Accordingly, Plaintiff and Class Members are entitled to recover their unpaid
7 wages, including minimum wages, overtime compensation, as well as interest, costs, and
8 attorneys’ fees.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

11 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

12 74. Plaintiff incorporates by reference and realleges each and every allegation contained
13 above, as though fully set forth herein.
14

15 75. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
16 period of more than five (5) hours without providing a meal break of not less than thirty (30)
17 minutes in which the employee is relieved of all of his or her duties, except that when a work period
18 of not more than six (6) hours will complete the day’s work the meal period may be waived by
19 mutual consent of the employer and employee.

20 76. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
21 for a work period of more than ten (10) hours without providing a second meal break of not less
22 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
23 break may only be waived by mutual consent, and if the employee did not waive his or her first
24 meal period, and the employee’s work day will not exceed twelve hours.

25 77. For the four (4) years preceding the filing of this lawsuit as tolled by Emergency
26 Rule 9, Defendants failed to provide Plaintiff and Class Members timely and uninterrupted first
27 meal periods of not less than thirty (30) minutes within the first five hours of a shift.

28 78. For the four (4) years preceding the filing of this lawsuit as tolled by Emergency

1 Rule 9, Defendants also failed to provide Plaintiff and Class Members timely and uninterrupted
2 second meal periods of not less than thirty (30) minutes on shifts longer than ten hours.

3 79. Indeed, during the relevant time, as a consequence of Defendants' staffing and
4 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
5 Plaintiff and the Class Members were not provided with legally required meal periods.

6 80. Upon information and belief, meal periods were automatically deducted from
7 hours worked for purported meal periods regardless of whether such meal periods were, in fact,
8 provided.

9 81. On information and belief, Plaintiff and Class Members did not waive their rights
10 to meal periods under the law.

11 82. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
12 periods.

13 83. Plaintiff and the Class Members were not paid one hour of pay at their regular rate
14 for each day that a first or second meal period was not lawfully provided.

15 84. As a proximate result of the aforementioned violations, Plaintiff and the Class
16 Members have been damaged in an amount according to proof at time of trial.

17 85. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
18 one (1) hour of premium pay at the regular rate for each day in which a meal period violation
19 occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties
20 as applicable.

21 86. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
22 represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
24 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
25 section 3287.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

3 **(By Plaintiff and the Rest Period Subclass Against All Defendants)**

4 87. Plaintiff incorporates by reference and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 88. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
7 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
11 be counted as hours worked, for which there shall be no deduction from wages."

12 89. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
13 during any rest period mandated by an applicable order of the IWC.

14 90. Defendants were required to authorize and permit employees such as Plaintiff and
15 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
16 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
17 with no deduction from wages.

18 91. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
19 Member's employment with Defendants, Defendants failed and refused to authorize and permit
20 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
21 worked, or major fraction thereof.

22 92. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay
23 for each day that a rest period violation occurred. On information and belief, the other members of
24 the Class endured similar violations as a result of Defendants' rest period policies and practices and
25 Defendant did not pay said Class Members premium pay as required by law.

26 93. By their failure to authorize and permit Plaintiff and the Class Members to take a
27 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
28 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and

1 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
2 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
3 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
4 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

5 94. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
6 represent have been deprived of premium wages in amounts to be determined at trial, and are
7 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
8 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

9
10
11
12 **FIFTH CAUSE OF ACTION**
13 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**
14 **EMPLOYMENT**
15 **(By Plaintiff and the Class Against All Defendants)**

16 95. Plaintiff incorporates by reference and realleges each and every allegation contained
17 above, as though fully set forth herein.

18 96. Labor Code section 204 requires that all wages are due and payable twice in each
19 calendar month.

20 97. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
21 due and payable to each employee in each month that he or she was not provided with a meal period
22 or rest period or paid minimum wage, straight or overtime wages, piece rate, or commissions to
23 which he or she was entitled.

24 98. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
25 under the Labor Code.

26 99. Labor Code section 210 (a) provides that “In addition to, and entirely independent
27 and apart from, any other penalty provided in this article, every person who fails to pay the wages
28 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
1197.5, shall be subject to a penalty as follow:

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

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

6 100. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
7 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
8 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
9 Labor Code § 210, 218.5, 218.6, 510, 1194.

10
11
12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

14 **(By Plaintiff and the Waiting Time Subclass Against All Defendants)**

15 101. Plaintiff incorporates by reference and realleges each and every allegation contained
16 above, as though fully set forth herein.

17 102. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
18 due within seventy-two (72) hours of separation of employment.

19 103. Section 203 of the Labor Code provides that if an employer willfully fails to timely
20 pay such wages the employer must, as a penalty, continue to pay the subject employee's wages
21 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days
22 of wages.

23 104. Plaintiff and Class Members are entitled to compensation for all forms of wages
24 earned, including but not limited to minimum wages, overtime, and premium meal and rest period
25 compensation, and commissions, but to date have not received such compensation, therefore
26 entitling them to Labor Code § 203 penalties.

1 105. More than thirty (30) days have passed since affected Waiting Time Subclass
2 Members have left Defendants' employ, and on information and belief, they have not received
3 payment pursuant to Labor Code § 203.

4 106. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
5 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

6 **SEVENTH CAUSE OF ACTION**

7 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
8 **EMPLOYEE WAGE STATEMENT PROVISIONS**

9 **By Plaintiff and Wage Statement Subclass Against Defendants**

10 107. Plaintiff repeats and incorporates herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 108. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
15 when wages are paid by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
17 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number, (8) the name and address of
20 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
21 pay period and the corresponding number of hours worked at each hourly rate by the
22 employee....".

23 109. Further, the IWC Wage Orders require in pertinent part: Every employer shall
24 keep accurate information with respect to each employee including the following: (3) Time
25 records showing when the employee begins and ends each work period. Meal periods, split shift
26 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
27 payroll period and applicable rates of pay...."

28 110. Labor Code section 1174 of the California also requires Defendants to maintain

1 and preserve, in a centralized location, among other items, records showing the names and
2 addresses of all employees employed and payroll records showing the hours worked daily by, and
3 the wages paid to, its employees. On information and belief and based thereon, Defendants have
4 knowingly and intentionally failed to comply with Labor Code section 1174, including by
5 implementing the policies and procedures and committing the violations alleged in the preceding
6 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
7 unlawful pursuant to Labor Code section 1175.

8 111. Defendants have failed to record many of the items delineated in applicable
9 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
10 1174, including by virtue of the fact that each wage statement which failed to accurately
11 compensate Plaintiff and Class Members for all hours worked, for missed and non-provided meal
12 and rest periods, all commissions earned, or which failed to include compensation for all
13 minimum wages earned or overtime hours worked, was an inaccurate wage statement.

14 112. On information and belief, Defendants failed to implement and preserve a lawful
15 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
16 periods owed to employees, as required for Non-Exempt Employees under California Labor Code
17 section 226 and applicable California Wage Orders. In order to determine if they had been paid
18 the correct amount and rate for all hours worked, Plaintiff and Class Members have been, would
19 have been, and are compelled to try to discover the required information missing from their wage
20 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
21 the wage statements Defendants provided to them.

22 113. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
23 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
24 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
25 required information. Specifically, Defendants have also omitted accurate itemizations of total
26 hours worked, hourly wages paid, the name and address of the legal entity that is the employer,
27 and gross pay from Plaintiff and the Class Members' wage statements. In addition, Defendants
28 have failed to provide accurate itemized wage statements as a consequence of the above-specified

1 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
2 failure to pay meal and rest period premiums as required by law.

3 114. Moreover, upon information and belief, as a pattern and practice, in violation of
4 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
5 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
6 Statement Class, including but not limited to, beginning and ending of each work period, meal
7 period and split shift interval, the total daily hours worked, and the total hours worked per pay
8 period and applicable rates of pay.

9 115. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
10 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
11 Class in that the members of the Wage Statement Class were not timely provided written accurate
12 itemized statements showing all requisite information, such that the members of the Wage
13 Statement Class were misled by Defendants as to the correct information regarding various items,
14 including but not limited to the identity of the employer, total hours worked by the employee,
15 gross pay, net wages earned and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate.

17 116. Pursuant to Labor Code section 226, and in light of Defendants' violations
18 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
19 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

20 **EIGHTH CAUSE OF ACTION**

21 **VIOLATION OF THE UNFAIR COMPETITION LAW**

22 **By Plaintiff and Class Against All Defendants**

23 117. Plaintiff incorporates by reference and realleges each and every allegation contained
24 above, as though fully set forth herein.

25 118. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
26 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
27 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
28 the meaning of the California Code of Civil Procedure § 1021.5.

1 119. Defendants' policies, activities, and actions as alleged herein are violations of
2 California law and constitute unlawful business acts and practices in violation of California
3 Business and Professions Code §§ 17200, *et seq.*

4 120. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
5 predicated on the violation of any state or federal law.

6 121. The state law violations, including violations of the relevant IWC Wage Order,
7 detailed herein above are the predicate violations for this cause of action. By way of example only,
8 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
9 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was
10 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.
11 Defendants further violated the law through their policies of failing to reimburse expenses and
12 failing to fully and accurately compensate Plaintiff and the Class Members for all hours worked,
13 including minimum wages, commissions, and overtime as well as failing to provide accurate
14 itemized wage statement as specified above.

15 122. Plaintiff and the Class Members have been personally aggrieved by Defendants'
16 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

17 123. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
18 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
19 during a period that commences four (4) years prior to the filing of this complaint; an award of
20 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
21 costs.

22 NINTH CAUSE OF ACTION

23 FAILURE TO REIMBURSE NECESSARY EXPENSES

24 **By Plaintiff and Class Against All Defendants**

25 124. Plaintiff incorporates by reference and realleges each and every allegation contained
26 above, as though fully set forth herein.

27 125. Plaintiff repeats and incorporates herein by reference each and every allegation set
28 forth above, as though fully set forth herein.

126. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

127. Plaintiff and the members of the Indemnification Class were required to incur expenses in the performance of their assigned job duties. For example, Plaintiff and the Indemnification Class Members were required to incur numerous out of pocket expenses for equipment and items necessary to do their jobs, including without limitation, drills, screwdrivers, measuring tape, and gauges, in direct consequence of the discharge of their duties.

128. Upon information and belief, the Defendants did not reimburse Plaintiff or the Plaintiff's subclass for such expenses.

129. As a result of the unlawful acts of Defendants, Plaintiff and the Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representatives of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay all wages owed, including overtime)

1. For the unpaid balance of the full amount of any overtime, minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and

6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;

2. For reasonable attorneys' fees and costs pursuant to statute; and

3. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and

2. For reasonable attorneys' fees and costs pursuant to statute; and

3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;

2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;

3. For interest;

4. For reasonable attorneys' fees and costs pursuant to statute; and

5. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages At Separation)

1. For unpaid wages;

2. For penalties pursuant to Labor Code § 203;

3. For interest;

4. For reasonable attorneys' fees and costs pursuant to statute; and

5. For such other and further relief as the Court deems proper.

1 **On the Sixth Cause of Action**

2 **(Failure to Provide Accurate Itemized Wage Statements)**

- 3 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
4 2. For reasonable attorneys' fees and costs; and
5 3. For such other and further relief as the Court deems proper;

6 **On the Seventh Cause of Action**

7 **(Violation of the Unfair Competition Law)**

8 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
9 sums to Plaintiff and Class Members for the Defendants' past failure to pay commissions, overtime
10 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium
11 wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last
12 four (4) years in an amount according to proof;

13 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
14 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

15 3. For pre-judgment interest on any unpaid overtime wages due from the day that such
16 amounts were due;

17 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
18 recover under the Labor Code; and

19 5. For such other and further relief as the Court deems proper.

20 **On the Eighth Cause of Action**

21 **(Failure to Reimburse Necessary Expenses)**

- 22 1. For unreimbursed sums;
23 2. For reasonable attorneys' fees and costs pursuant to statute;
24 3. For interest; and
25 4. For such other and further relief as the Court deems proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

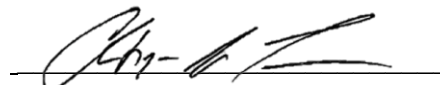
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter.

Respectfully submitted,

JAMES HAWKINS APLC

Dated: March 19, 2021



James R. Hawkins, Esq.

Christina M. Lucio, Esq.

Attorneys for Plaintiff GERARDO ABUNDO, on behalf
of himself and all others similarly situated