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

RAUL CANDELARIO, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

SYMONS FIRE PROTECTION, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2021-00015452-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ., CLAIM FOR PENALTIES FOR:**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 & 512(a) (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d) and 1198 (Non-Compliant Wage Statements and Failure to Maintain Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses).

1 Plaintiff RAUL CANDELARIO, individually, and on behalf of all other members of
2 the public similarly situated and as an aggrieved employee and on behalf of all other
3 Aggrieved Employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This state enforcement action is brought pursuant to California Labor Code
6 sections 2698 *et seq.* (“PAGA”) to recover civil penalties and any other available relief on
7 behalf of Plaintiff, the State of California, and Aggrieved Employees, including current and
8 former employees who worked for Defendants in California as non-exempt, hourly-paid
9 employees who received at least one physical wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statutes under which this action is brought do not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice.

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

26 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
27 General Act of 2004” (“PAGA”), authorize Aggrieved Employees to sue as private attorneys
28 general their current or former employers for various civil penalties for violations of various

provisions in the California Labor Code.

THE PARTIES

6. Plaintiff RAUL CANDELARIO, at all times relevant to the claims asserted herein, was a resident of San Diego, in San Diego County, California. Defendants employed Plaintiff as an hourly, non-exempt employee from on or about March 23, 2020 to on or about July 22, 2020. Plaintiff initially started working for SYMONS FIRE PROTECTION, INC. (“SYMONS” or “DEFENDANT”) as an “Fire Sprinkler Installer” who performed his work at active construction sites in San Diego County, California. During his employment, Plaintiff typically worked eight (8) to ten (10) hours per day, five (5) days per week, and approximately forty-five (45) to fifty (50) or more hours per week. His job duties included, without limitation, assisting the onsite workers with installation of and installing fire sprinkler components and systems.

7. Defendant SYMONS was and is, upon information and belief, a California corporation doing business in California, with its principal place of business in Poway, CA, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

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

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of SYMONS at all relevant times.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, SYMONS; and/or DOES 1 through 10 (collectively “DEFENDANTS” or “Defendants”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment,

1 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
2 of any and all Defendants were in accordance with, and represent, the official policy of
3 Defendants.

4 11. At all relevant times, Defendants, and each of them, ratified each and every act
5 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
6 and abetted the acts and omissions of each and all the other Defendants in proximately causing
7 the damages herein alleged.

8 12. Plaintiff is informed and believes, and thereon alleges, that each of said
9 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
10 omissions, occurrences, and transactions alleged herein.

11 13. Under California law, Defendants are jointly and severally liable as employers
12 for the violations alleged herein because they have each exercised sufficient control over the
13 wages, hours, working conditions, and employment status of Plaintiff and Aggrieved
14 Employees. Each Defendant had the power to hire and fire Plaintiff and Aggrieved
15 Employees, supervised and controlled their work schedule and/or conditions of employment,
16 determined their rate of pay, and maintained their employment records. Defendants suffered
17 or permitted Plaintiff and Aggrieved Employees to work and/or "engaged" Plaintiff and
18 Aggrieved Employees so as to create a common-law employment relationship. As joint
19 employers of Plaintiff and Aggrieved Employees, Defendants are jointly and severally liable
20 for the civil penalties and all other relief available to Plaintiff and Aggrieved Employees under
21 the law.

22 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
23 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
24 Aggrieved Employees because Defendants have:

25 (a) jointly exercised meaningful control over the work performed by
26 Plaintiff and Aggrieved Employees;

27 (b) jointly exercised meaningful control over Plaintiff and Aggrieved
28 Employees' wages, hours, and working conditions, including the

1 quantity, quality standards, speed, scheduling, and operative details of
2 the tasks performed by Plaintiff and Aggrieved Employees;

3 (c) jointly required that Plaintiff and Aggrieved Employees perform work
4 which is an integral part of Defendants' businesses; and

5 (d) jointly exercised control over Plaintiff and Aggrieved Employees as a
6 matter of economic reality in that Plaintiff and Aggrieved Employees
7 were dependent on Defendants, who shared the power to set the wages
8 of Plaintiff and Aggrieved Employees and determined their working
9 conditions, and who jointly reaped the benefits from the underpayment
10 of their wages and noncompliance with other statutory provisions
11 governing their employment.

12 15. Plaintiff is informed and believes, and further alleges, that at all relevant times there
13 has existed a unity of interest and ownership between Defendants such that any individuality
14 and separateness between the entities has ceased.

15 16. SYMONS and DOES 1 through 10 are therefore alter egos of each other.

16 17. Adherence to the fiction of the separate existence of Defendants would permit an abuse
17 of the corporate privilege, and would promote injustice by protecting Defendants from
18 liability for the wrongful acts committed by them under the name SYMONS.

19 GENERAL ALLEGATIONS

20 18. Defendants are a full-service fire-life safety company located in the San Diego
21 area and serving all of Southern California. Within California, Defendants are estimated to
22 employ over 100 persons.

23 19. Upon information and belief, Defendants maintain a single, centralized Human
24 Resources department in Poway, California, which is responsible for collecting and processing
25 all new hire paperwork, and communicating and implementing Defendants' company-wide
26 policies, including timekeeping policies and meal and rest break policies, to employees
27 throughout California.

28 20. In particular, Plaintiff and Aggrieved Employees, on information and belief,

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

7 21. On information and belief, all transactions regarding hiring, terminations,
8 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
9 employees were submitted to and processed by Defendants' HR department in Poway,
10 California. Additionally, on information and belief, Defendants' corporate records, business
11 records, data, and other information related to Defendants, including, in particular, HR records
12 pertaining to Defendants' California employees, are also maintained at Defendants' corporate
13 headquarters in Poway, California.

14 22. Upon information and belief, Defendants maintain a centralized Payroll
15 department in Poway, California, which processes payroll for all non-exempt, hourly-paid
16 employees working for Defendants at their various locations in California, including Plaintiff
17 and Aggrieved Employees. Based upon information and belief, Defendants issued the same
18 formatted wage statements to all non-exempt employees in California, irrespective of their
19 work location. Upon information and belief, Defendants process payroll for departing
20 employees in the same manner throughout the State of California, regardless of the manner in
21 which each employee's employment ends. Upon further information and belief, during the
22 relevant time period, Defendants used third party Paychex, Inc. to process and issue uniform,
23 standardized wage statements to Plaintiff and Aggrieved Employees.

24 23. Defendants continue to employ non-exempt, hourly-paid employees within
25 California.

26 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
28 and advisors knowledgeable about California labor and wage law, employment and personnel

1 practices, and about the requirements of California law.

2 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
3 Aggrieved Employees were not paid for all hours worked because all hours worked were not
4 recorded.

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
7 wages for overtime compensation and that they were not receiving certain wages for overtime
8 compensation.

9 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
11 minimum wages for compensation and that they were not receiving at least minimum wages
12 for work that was required to be done off-the-clock. In violation of the California Labor Code,
13 Plaintiff and Aggrieved Employees were not paid at least minimum wages for work done off-
14 the-clock.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
17 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
18 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
19 periods and that Plaintiff and Aggrieved Employees were not provided with all meal periods
20 or payment of one (1) additional hour of pay at their regular rates of pay when they did not
21 receive a timely, uninterrupted, thirty (30) minute meal period.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
24 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
25 additional hour of pay at their regular rates of pay when they were not provided with a
26 compliant rest period and that Plaintiff and Aggrieved Employees were not provided
27 compliant rest periods or payment of one (1) additional hour of pay at their regular rates of
28 pay when they were not provided a compliant rest period.

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

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

10 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
12 of all wages earned upon termination of employment. In violation of the California Labor
13 Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due,
14 including, but not limited to, overtime wages, minimum wages, and meal and rest period
15 premiums, within permissible time periods.

16 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
18 of wages during their employment. In violation of the California Labor Code, Plaintiff and
19 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
20 overtime wages, minimum wages, and meal and rest period premiums, within permissible
21 time periods.

22 34. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
23 should have known that Plaintiff and Aggrieved Employees were entitled to receive
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment, and that they did not receive reimbursement of applicable
26 business-related expenses and costs they incurred.

27 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and Aggrieved Employees for all hours worked, and that Defendants had the
2 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed
3 to do so, and falsely represented to Plaintiff and Aggrieved Employees that they were properly
4 denied wages, all in order to increase Defendants' profits.

5 **Claims for Penalties Under 2004 Private Attorneys General Act**

6 36. The duties and business activities of the Aggrieved Employees were essentially
7 the same as the duties and activities of the Plaintiff described above.

8 37. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698,
9 2699, which generally consists of the following group:

10 **All current or former employees who worked in the state of California from April**
11 **7, 2020 to the present for the Defendants.**

12 38. All members of the represented groups will be referred to as the "Aggrieved
13 Employees."

14 39. The "Representative Period" means from **April 7, 2020** to the present, the
15 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

16 40. At all times during the Representative Period, all the Aggrieved Employees
17 were employed in the same or similar job as Plaintiff and were paid in the same manner and
18 under the same standard employment procedures and practices as the Plaintiff.

19 41. Plaintiffs further allege, and on information and belief, Aggrieved Employees,
20 did not receive all wages due at the time their employment ended with Defendants.

21 42. On information and belief, current and former employees of Defendants were
22 subject to wage and hour violations by Defendants, including failing to be paid for all wages
23 due.

24 43. California law provides that an employee may file an action against an
25 employer to recover penalties for violations of the Labor Code and Wage Orders provided the
26 aggrieved employee files an action on behalf of him or herself and similarly-situated current
27 and former employees.

28 44. At all material times, Defendants and DOES 1 through 10 were and/or are

1 Aggrieved Employees’ employers or persons acting on behalf of Aggrieved Employees’
2 employer, within the meaning of California Labor Code § 558, who violated or caused to be
3 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
4 regulating hours and days of work in any Order of the Industrial Welfare Commission and, as
5 such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

6 45. As set forth in further detail below, because of the analysis and investigation of
7 the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the California Labor and Workforce
8 Development Agency (hereinafter referred to as “LWDA”) and to Defendants informing
9 Defendants of their claims and their intent to pursue litigation.

10 **Exhaustion of Administrative Remedies**

11 46. As to penalty claims under the Labor Code Private Attorney General Act, on
12 **April 7, 2021**, Plaintiff provided written notice by online filing to the LWDA and by Certified
13 Mail to Defendants of the specific provisions of the California Labor Code alleged to have
14 been violated, including facts and theories to support the alleged violations, in accordance
15 with California Labor Code section 2699.3. Plaintiff’s written notice was accompanied with
16 the applicable filing fee of seventy-five dollars (\$75).

17 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff
18 sent the initial LWDA Notice described above, and the LWDA has not responded that it
19 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

20 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
21 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
22 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
23 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

24 49. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by Aggrieved Employees in
28 a civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 11 (a) The aggrieved employee shall give written notice by online filing
12 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
13 to the employer of the specific provisions of the California Labor Code
14 alleged to have been violated, including the facts and theories to support
15 the alleged violations.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
20 employer and the aggrieved employee by certified mail that it does not
21 intend to investigate the alleged violation within sixty (60) calendar
22 days of the postmark date of the Employee’s Notice. Upon receipt of
23 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
24 five (65) calendar days of the postmark date of the Employee’s Notice,
25 the aggrieved employee may commence a civil action pursuant to
26 California Labor Code section 2699 to recover civil penalties in addition
27 to any other penalties to which the employee may be entitled.

28 53. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

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

20 54. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiff's and other Aggrieved Employees'
22 rights by violating various sections of the California Labor Code as set forth above.

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

26 56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
28 general, seeks assessment and collection of civil penalties for herself, all other Aggrieved

1 Employees, and the State of California against Defendants, in addition to other remedies, for
2 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
3 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

4 **PAGA PENALTIES AND LABOR CODE VIOLATIONS ASSERTED**

5 **Penalties for Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

6 57. California Labor Code section 1198 makes it illegal to employ an employee
7 under conditions of labor that are prohibited by the applicable wage order. California Labor
8 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
9 shall be the . . . standard conditions of labor for employees. The employment of any employee
10 . . . under conditions of labor prohibited by the order is unlawful.”

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

15 59. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and Aggrieved Employees working more than eight (8) hours in
17 a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

20 60. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and Aggrieved Employees working more than twelve (12) hours in a
22 day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
23 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
24 employee, including non-discretionary bonuses and incentive pay.

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

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 62. For example, Plaintiff and other employees were instructed be 15-30 minutes
4 early for their shifts every day because “being on time is being late,” and they were not
5 compensated for this time. Additionally, Plaintiff and other employees were instructed to
6 clock out at their precisely scheduled shift end time, but were then asked to perform additional
7 “clean up” work after they clocked out. This additional work would usually take between 15-
8 30 minutes, and occurred almost every day. If Plaintiff or another employee did not clock out
9 at their scheduled shift end time and instead clocked out after they completed their work, they
10 risked being reprimanded.

11 63. Additionally, Plaintiff and other employees, upon hiring, were required to
12 complete training each week during approximately the first 3 weeks of their employment with
13 Defendants. One day each week, after Plaintiff’s shift, he and other employees were required
14 to drive to the Company’s Poway Headquarters to complete unpaid training related to his
15 position. These unpaid training sessions would last approximately an hour.

16 64. Moreover, during the last month of Plaintiff’s employment, he and other
17 employees would drive to the Company’s Poway Headquarters after completing their work on
18 the job site to complete additional unpaid training related to his position. Again, these unpaid
19 training sessions would last approximately an hour.

20 65. Accordingly, during the relevant time period, Defendants willfully failed to pay
21 all overtime wages owed to Plaintiff and Aggrieved Employees. During the relevant time
22 period, Plaintiff and Aggrieved Employees were not paid overtime premiums for all of the
23 hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a
24 day, and/or in excess of forty (40) hours in a week, because all hours worked were not
25 recorded.

26 66. Further, when Plaintiff and Aggrieved Employees worked shifts in excess of
27 ten (10) hours in a day, Defendants did not provide them with a second uninterrupted 30-
28 minute meal period. Plaintiff and Aggrieved Employees did not sign valid meal break waivers

1 on days that they were entitled to meal periods but were not relieved of all duties.

2 67. Because Plaintiff and Aggrieved Employees regularly worked shifts of eight (8)
3 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
4 qualified for overtime premium pay. Therefore, Plaintiff and Aggrieved Employees were not
5 paid overtime wages for all of the overtime hours they actually worked.

6 68. Defendants' failure to pay Plaintiff and Aggrieved Employees the balance of
7 overtime compensation and failure to include all applicable remuneration in calculating the
8 regular rate of pay for overtime pay, as required by California law, violates the provisions of
9 California Labor Code sections 510 and 1198.

10 **Penalties for Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1—Unpaid**
11 **Minimum Wages**

12 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
13 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
14 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
15 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time
16 during which an employee is subject to the control of an employer, and includes all the time
17 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
18 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

19 70. For example, Plaintiff and other employees were instructed to be 15-30 minutes
20 early for their shifts every day because "being on time is being late," and they were not
21 compensated for this time. Additionally, Plaintiff and other employees were instructed to
22 clock out at their precisely scheduled shift end time, but were then asked to perform additional
23 "clean up" work after they clocked out. This additional work before and after their shifts,
24 would usually take approximately 30 minutes, and occurred almost every day. If Plaintiff or
25 another employee did not clock out at their scheduled shift end time and instead clocked out
26 after they completed their work, they risked being reprimanded by Defendants.

27 71. Additionally, Plaintiff and other employees, upon hiring, were required to
28 complete training each week during approximately the first 3 weeks of their employment with

1 Defendants. One day each week, after Plaintiff's shift, he and other employees were required
2 to drive to the Company's Poway Headquarters to complete unpaid training related to his
3 position. These unpaid training sessions would last approximately an hour.

4 72. Moreover, during the last month of Plaintiff's employment, he and other
5 employees would drive to the Company's Poway Headquarters after completing their work on
6 the job site to complete additional unpaid training related to his position. Again, these unpaid
7 training sessions would last approximately an hour.

8 73. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
9 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
10 hours did not qualify for overtime premium payment, Defendants did not pay at least
11 minimum wages for those hours worked off-the-clock in violation of California Labor Code
12 sections 1182.12, 1194, 1197, 1197.1, and 1198.

13 74. Defendants' failure to pay Plaintiff and Aggrieved Employees minimum wages
14 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

15 **Penalties for Violations of California Labor Code, §§ 226.7 and 512(a)—Meal Period**
16 **Violations**

17 75. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
18 California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and
19 Aggrieved Employees' employment by Defendants.

20 76. At all relevant times herein set forth, California Labor Code section 512(a)
21 provides that an employer may not require, cause, or permit an employee to work for a period
22 of more than five (5) hours per day without providing the employee with a meal period of not
23 less than thirty (30) minutes, except that if the total work period per day of the employee is
24 not more than six (6) hours, the meal period may be waived by mutual consent of both the
25 employer and the employee. Under California law, first meal periods must start after no more
26 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
27 2012).

28 77. At all relevant times herein set forth, California Labor Code section 226.7 and

1 512(a) provide that no employer shall require an employee to work during any meal period
2 mandated by an applicable order of the IWC.

3 78. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
4 the applicable IWC Wage Order also require employers to provide a second meal break of not
5 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
6 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
7 hours worked is no more than twelve (12) hours, the second meal period may be waived by
8 mutual consent of the employer and the employee only if the first meal period was not waived.
9 Under California law, an employer cannot evade meal break requirements via the use of "on-
10 duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*,
11 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

12 79. As stated, Defendants' policies and production requirements prevented Plaintiff
13 and Aggrieved Employees from taking compliant meal periods. Because of Defendants'
14 practices and/or policies, Plaintiff and Aggrieved Employees were required to continue to
15 perform their duties without being able to take a timely, compliant meal period. Plaintiff and
16 Aggrieved Employees had to work through part or all of their meal periods, have their meal
17 periods interrupted, and/or wait extended periods of time before taking meal periods. Further,
18 on information and belief, Defendants routinely altered Plaintiff's and Aggrieved Employees'
19 meal period time records to reflect that compliant meal periods were taken, when, in actuality,
20 they were not.

21 80. Furthermore, Defendants did not provide Plaintiff and Aggrieved Employees
22 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
23 one day. As stated, Plaintiff sometimes worked 10-hour shifts without being permitted or
24 authorized to take a second 30-minute meal period. Plaintiff and Aggrieved Employees did
25 not sign valid meal break waivers on days that they were entitled to meal periods and were not
26 relieved of all duties.

27 81. Additionally, Defendants systematically and on a company-wide basis required
28 that Plaintiff and Aggrieved Employees always record meal breaks, even when meal breaks

1 were never taken, or were late, short, and/or interrupted. As a result, 30-minute meal periods
2 were deducted from Plaintiff's and Aggrieved Employees' time records for hours they actually
3 spent working.

4 82. Further, Labor Code section 1198 and the applicable wage order require that
5 employers record meal periods. Defendants violated Labor Code section 1198 and the
6 applicable wage order insofar as Defendants failed to correctly record when Plaintiff and
7 Aggrieved Employees took meal periods, to the extent they were authorized and permitted to
8 do so.

9 83. Moreover, Defendants engaged in a systematic, company-wide practice and/or
10 policy payoff not paying meal period premiums owed when compliant meal periods were not
11 provided. Defendants' company-wide policy was to treat noncompliant meals as "on duty"
12 meal periods instead of to pay meal period premiums.

13 84. Plaintiff and Aggrieved Employees did not receive all required off-duty meal
14 periods and did not receive premium pay for missed meal periods. Alternatively, to the extent
15 that Defendants did pay Plaintiff and Aggrieved Employees one (1) additional hour of
16 premium pay for missed meal periods. As a result, Defendants failed to provide Plaintiff and
17 Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums
18 due.

19 85. Defendants' conduct violates the applicable IWC Wage Order, and California
20 Labor Code sections 226.7, 512(a), and 1198.

21 **Violation of California Labor Code § 226.7—Rest Break Violations**

22 86. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7 and 1198 were applicable to Plaintiff and Aggrieved
24 Employees' employment by Defendants.

25 87. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 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.

88. At all relevant times, 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. To comply with its obligation to provide 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).

89. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not provided.

90. During the relevant time period, Defendants onerous production requirements resulted in Defendants regularly failing to authorize and permit Plaintiff and Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Additionally, Defendants had no policy of scheduling rest periods for employees, which further impeded and prevented Plaintiff and Aggrieved Employees from taking rest periods.

91. As a result, Plaintiff and Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of six (6) hours, and in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Plaintiff was not permitted to take a full and complete 10-minute rest period.

92. Defendants have also engaged in a company-wide practice and/or policy to not pay rest period premiums owed when compliant rest periods are not provided. As a result, Plaintiff and Aggrieved Employees were denied rest periods and Defendants failed to pay the full rest period premiums due, in violation of Labor Code section 226.7 and the applicable

1 IWC Wage Order.

2 93. Defendants' conduct violates the applicable IWC Wage Order and California
3 Labor Code sections 226.7 and 1198.

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

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

11 95. During the relevant time period, Defendants have knowingly and intentionally
12 provided Plaintiff and Aggrieved Employees with uniform, incomplete, and inaccurate wage
13 statements. Specifically, Defendants violated sections 226. Because Defendants deducted
14 time worked from Plaintiff's and Aggrieved Employees' wage statements and employment
15 records for meal periods they did not actually receive, *infra*, the result of which was an
16 unlawful deduction of wages earned and meal period premiums that should have been paid.
17 Thus, Defendants did not furnish wage statements to Plaintiff and Aggrieved Employees
18 containing accurate totals of the hours worked (Lab. Code § 226(a)(2)), the number of hours
19 worked at each hourly rate (Lab. Code § 226(a)(9), the net wages earned (Lab. Code §
20 226(a)(5)) and gross wages earned (Lab. Code § 226(a)(1)).

21 96. California Labor Code section 1174(d) provides that "[e]very person employing
22 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
23 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
24 plants or establishments at which employees are employed, payroll records showing the hours
25 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
26 applicable piece rate paid to, employees employed at the respective plants or
27 establishments..." During the relevant time period, and in violation of Labor Code
28 section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff

1 and Aggrieved Employees showing the daily hours they worked and the wages paid thereto as
2 a result of failing to record the off-the-clock hours that they worked and failing to correctly
3 list the gross wages and net wages earned by them.

4 97. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
6 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
7 employment of any employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
9 Wage Order, employers are required to keep accurate time records showing when the
10 employee begins and ends each work period and meal period. During the relevant time
11 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period
12 start and stop times for Plaintiff and Aggrieved Employees, in violation of section 1198.
13 Furthermore, in light of Defendants’ failure to provide Plaintiff and Aggrieved Employees
14 with second 30-minute meal periods to which they were entitled, Defendants failed to keep
15 accurate records of meal start and end times for second meal periods.

16 98. Because Defendants failed to provide the accurate number of total hours
17 worked, and the correct gross wages earned, and net wages earned on wage statements,
18 Plaintiff and Aggrieved Employees have been prevented from verifying, solely from
19 information on the wage statements themselves, that they were paid correctly and in full.
20 Instead, Plaintiff and Aggrieved Employees have had to look to sources outside of the wage
21 statements themselves and reconstruct time records to determine whether in fact they were
22 paid correctly and the extent of underpayment, thereby causing them injury in violation of
23 Sections 226, and 1198.

24 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon**
25 **Termination**

26 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
27 that if an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 100. During the relevant time period, Defendants willfully failed to pay Plaintiff and
6 Aggrieved Employees all wages earned upon their discharge or resignation. Additionally,
7 Defendant willfully failed to pay Plaintiff and other Aggrieved Employees who are no longer
8 employed by Defendants all their earned wages set forth above, including but not limited to,
9 overtime wages, minimum wages, meal and rest period premium wages either at the time of
10 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

11 101. Defendants' failure to pay Plaintiff and those Aggrieved Employees who are no
12 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
13 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code
14 sections 201 and 202.

15 102. Plaintiff and Aggrieved Employees are therefore entitled to recover from
16 Defendants the statutory penalty wages for each day they were not paid, at their regular rate of
17 pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

18 **Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses**

19 103. At all times herein set forth, California Labor Code section 2802 provides that
20 an employer must reimburse employees for all necessary expenditures and losses incurred by
21 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
22 to prevent employers from passing off their cost of doing business and operating expenses on
23 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
24 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or
25 equipment are required by the employer or are necessary to the performance of a job, such
26 tools and equipment shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum wage provided herein may be
28 required to provide and maintain hand tools and equipment customarily required by the trade

1 or craft.”

2 104. During the relevant time period, Defendants, on a company-wide basis,
3 required that Plaintiff and Aggrieved Employees use their own personal cellular phones and/or
4 cellular phone data to carry out their job duties, but Defendants failed to reimburse them for
5 the costs of their cellular phone plans and/or data plans. Plaintiff and Aggrieved Employees
6 had to use their personal cell phones to communicate with management and other employees
7 and manage their time records, i.e., clock in and clock out for their shifts. For example,
8 Plaintiff was required to use his personal cellular phone in order to carry out his duties, such as
9 communicating with employees and managers via text and telephonically, and clocking in to
10 begin his shift and out to end it, and answering emails from management and the Company.
11 Plaintiff estimates that approximately 40-50% of his cellular phone usage was attributable to
12 carrying out his work-related duties. Defendants did not offer Plaintiff reimbursement for his
13 cellular phone expenses, did not provide him with any paperwork or instructions for
14 submitting his cellular phone expenses for reimbursement, and did not inform him of his right
15 to be reimbursed for these expenses. Other Aggrieved Employees were similarly required to
16 use their personal cellular phones for work purposes to communicate with management and
17 co-workers, among other tasks.

18 105. Defendants also, on a company-wide basis, forced Plaintiff and Aggrieved
19 Employees to drive in their own personal vehicles to training sessions or meetings outside of
20 their usual workplaces, and did not reimburse them for all their travel expenses. On
21 information and belief, Plaintiff was not offered reimbursement, given paperwork for
22 reimbursement, or actually reimbursed for all of his mileage.

23 106. Defendants engaged in a systematic, company-wide policy to not reimburse its
24 employees for necessary business expenses. Defendants could have provided Plaintiff and
25 Aggrieved Employees with the actual tools for use on the job, including company phones and
26 company vehicles, or reimbursed employees for their cell phone usage, but instead,
27 Defendants passed these operating costs off onto Plaintiff and Aggrieved Employees. At all
28 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

107. Defendants' company-wide policy and/or practice of passing its operating costs on to Plaintiff and Aggrieved Employees is in violation of California Labor Code section 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses and costs.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

109. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits Aggrieved Employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 1182.12.

110. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and other Aggrieved Employees as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other Aggrieved Employees with at least minimum wages for all hours worked as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 1198, and the applicable

- 1 IWC wage order for Defendants' failure to provide Plaintiff and other
2 Aggrieved Employees with meal and/or rest periods, as alleged herein;
- 3 (d) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 wage order for failure to provide accurate and complete wage statements
5 to Plaintiff and other Aggrieved Employees, as alleged herein;
- 6 (e) Violations of Labor Code sections 1174(d), 1198, and the applicable
7 IWC wage order for failure to maintain payroll records as alleged
8 herein;
- 9 (f) Violation of Labor Code section 204 for failure to pay all earned wages
10 during employment as set forth below;
- 11 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
12 earned wages upon termination as alleged herein;
- 13 (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
14 and other Aggrieved Employees for all business expenses necessarily
15 incurred, as alleged herein; and

16 111. At all relevant times herein set forth, California Labor Code section 204
17 requires that all wages earned by any person in any employment between the 1st and the 15th
18 days, inclusive, of any calendar month, other than those wages due upon termination of an
19 employee, are due and payable between the 16th and the 26th day of the month during which
20 the labor was performed. Labor Code section 204 further provides that all wages earned by
21 any person in any employment between the 16th and the last day, inclusive, of any calendar
22 month, other than those wages due upon termination of an employee, are due and payable
23 between the 1st and the 10th day of the following month.

24 112. At all relevant times herein, California Labor Code section 204 also requires
25 that all wages earned for labor in excess of the normal work period shall be paid no later than
26 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
27 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
28 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven (7) calendar days following the close of the payroll period.

2 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 other Aggrieved Employees all wages due to them within any time period specified by
4 California Labor Code section 204 including, but not limited to, overtime wages, minimum
5 wages, meal and rest period premium wages, and bonus pay. Plaintiff and other Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code
7 sections 210 and/or 2699(a), (f), and (g).

8 **PRAYER FOR RELIEF**

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

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

14 2. That the Court declare, adjudge and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiff and Aggrieved Employees: 510 and
16 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198
17 (by failing to pay at least minimum wages for all hours worked); 226.7, 512 and 1198 (by
18 failing to provide all meal and rest periods); 226(a), 1174(d) and 1198 (by failing to provide
19 accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing
20 timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned
21 wages during employment); and 2802 (by failing to reimburse business expenses).

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
23 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
24 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1,
25 1198, and 2802;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194,

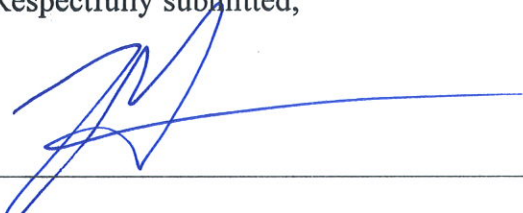
1 1197, 1197.1, 1198, and 2802;

2 5. For pre-judgment and post-judgment interest as provided by law; and

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

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6
7
8 Dated: August 10, 2021

Respectfully submitted,

9
10
11 By: 

12 Attorneys for Plaintiff
13 and Aggrieved Employees

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