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

ALBERTO VARGAS RIOS, individually,
and on behalf of other members of the
general public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

MCH ELECTRIC, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: RG21103287

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

ENDORSED
FILED
ALAMEDA COUNTY
SEP 13 2021
CLERK OF THE SUPERIOR COURT
By SUE PESK Deputy

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Alberto Vargas Rios, individually and on behalf of all other similarly situated
2 individuals and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

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

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

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

4 3. Venue is proper in this Court, because Defendant MCH ELECTRIC, INC. filed
5 a Statement of Information form with the California Secretary of State designating a principal
6 place of business in Livermore, County of Alameda, in accordance with California
7 Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in
8 this Court, because Defendants employ persons in this county, and employed Plaintiff in this
9 county, and thus a substantial portion of the transactions and occurrences related to this action
10 occurred in this county.

11 **THE PARTIES**

12 4. Plaintiff ALBERTO VARGAS RIOS is a resident of Bay Point, in Contra
13 Costa County, California. Defendants employed Plaintiff as an hourly paid, non-exempt
14 Machine Operator from approximately September 2015 to October 2020. During his
15 employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) days per
16 week. Plaintiff's primary job duties included, without limitation, excavating, trenching, and
17 adding conduit at Defendants' various jobsites.

18 5. MCH ELECTRIC, INC. was and is, upon information and belief, a California
19 corporation, and at all times hereinafter mentioned, an employer whose employees are
20 engaged throughout this county, the State of California, or the various states of the United
21 States of America.

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

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers MCH ELECTRIC, INC. at all relevant times.

28 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, MCH ELECTRIC,
2 INC. and/or DOES 1 through 10 (collectively, “Defendants” or “MCH”), each acting as the
3 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
4 other co-Defendants and was acting within the course and scope of such agency, employment,
5 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
6 of any and all Defendants were in accordance with, and represent, the official policy of
7 Defendants.

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

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

15 **GENERAL ALLEGATIONS**

16 11. Defendants are the owners and operators of an underground infrastructure and
17 electric construction services company. Upon information and belief, Defendants maintain a
18 single, centralized Human Resources (“HR”) department at their company headquarters in
19 Livermore, California, which is responsible for the recruiting and hiring of new employees,
20 and communicating and implementing Defendants’ company-wide policies, including
21 timekeeping policies and meal and rest period policies, to employees throughout California.

22 12. In particular, Plaintiff and class members, on information and belief, received
23 the same standardized documents and/or written policies. Upon information and belief, the
24 usage of standardized documents and/or written policies, including new-hire documents,
25 indicate that Defendants dictated policies at the corporate level and implemented them
26 company-wide, regardless of their employees’ assigned locations or positions. Upon
27 information and belief, Defendants set forth uniform policies and procedures in several
28 documents provided at an employee’s time of hire.

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

9 14. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
13 and advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

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

17 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive certain wages for
19 overtime compensation and that they were not receiving certain wages for overtime
20 compensation.

21 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive at least minimum
23 wages for compensation and that they were not receiving at least minimum wages for work
24 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
25 and class members were not paid at least minimum wages for work done off-the-clock.

26 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to meal periods in
28 accordance with the California Labor Code and applicable IWC Wage Order or payment of

one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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

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

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

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within

1 permissible time periods.

2 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of wages
4 during their employment. In violation of the California Labor Code, Plaintiff and class
5 members did not receive payment of all wages, including, but not limited to, overtime wages,
6 minimum wages, and/or meal and rest period premiums, within permissible time periods.

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

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and/or class members were entitled to receive all reporting
13 time pay when Defendants required Plaintiff and/or class members were required to report to
14 work but were put to work for less than half of their regular scheduled shift. In violation of
15 the California Labor Code, Plaintiff and/or class members were not paid all reporting time
16 pay.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive full
19 reimbursement for all business-related expenses and costs they incurred during the course and
20 scope of their employment and that they did not receive full reimbursement of applicable
21 business-related expenses and costs incurred.

22 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that Defendants had a duty to provide
24 Plaintiff and class members with written notice of the material terms of their employment with
25 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

26 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
28 and class members with safety devices and safeguards, such as personal protective equipment

1 to protect their life, safety, and health in the workplace, but failed to do so.

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

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 31. At all times herein set forth, PAGA provides that any provision of law under
10 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
11 assessed and collected by the LWDA for violations of the California Labor Code and
12 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
13 civil action brought on behalf of themselves and other current or former employees pursuant
14 to procedures outlined in California Labor Code section 2699.3.

15 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
16 person who was employed by the alleged violator and against whom one or more of the
17 alleged violations was committed."

18 33. Plaintiff and other current and former employees of Defendants are "aggrieved
19 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
20 or former employees and one or more of the alleged violations were committed against them.

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

- 24 (a) The aggrieved employee or representative shall give written notice by
25 online filing with the LWDA and by certified mail to the employer of
26 the specific provisions of the California Labor Code alleged to have
27 been violated, including the facts and theories to support the alleged
28 violation.

1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(a) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).

4 (c) The LWDA shall notify the employer and the aggrieved employee or
5 representative by certified mail that it does not intend to investigate the
6 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
7 the postmark date of the aggrieved employee's notice. Upon receipt of
8 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
9 (65) calendar days of the postmark date of the aggrieved employee's
10 notice, the aggrieved employee may commence a civil action pursuant
11 to California Labor Code section 2699 to recover civil penalties.

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

16 (a) The aggrieved employee or representative shall give written notice by
17 online filing with the LWDA and by certified mail to the employer of
18 the specific provisions of the California Labor Code alleged to have
19 been violated (other than those listed in Section 2699.5), including the
20 facts and theories to support the alleged violation.

21 (b) An aggrieved employee's notice filed with the LWDA pursuant to
22 2699.3(c) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).

24 (c) The employer may cure the alleged violation within thirty-three (33)
25 calendar days of the postmark date of the notice sent by the aggrieved
26 employee or representative. The employer shall give written notice
27 within that period of time by certified mail to the aggrieved employee or
28 representative and by online filing with the LWDA if the alleged

1 violation is cured, including a description of actions taken, and no civil
2 action pursuant to Section 2699 may commence. If the alleged violation
3 is not cured within the 33-day period, the aggrieved employee may
4 commence a civil action pursuant to Section 2699.

5 36. On July 8, 2021, Plaintiff provided written notice by online filing to the LWDA
6 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
7 alleged to have been violated, including facts and theories to support the alleged violations, in
8 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
9 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
10 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA
11 Case Number LWDA-CM-837243-21. A true and correct copy of Plaintiff's written notice to
12 the LWDA and Defendants is attached hereto as "Exhibit 1."

13 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
14 sent the notice described above to the LWDA, and the LWDA has not responded that it
15 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

16 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
17 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
18 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
19 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

20 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
24 dollars (\$50) for each underpaid employee for each pay period for which the employee was
25 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
27 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
28 to any other civil or criminal penalty provided by law."

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

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

42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

47. Members of the Class and Subclass are referred to herein as “class members.”

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

1 theories of liability.

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

- 4 (a) Whether Defendants required Plaintiff and class members to work over
5 eight (8) hours per day, over twelve (12) hours per day, or over forty
6 (40) hours per week and failed to pay all legally required overtime
7 compensation to Plaintiff and class members;
- 8 (b) Whether Defendants failed to pay Plaintiff and class members at least
9 minimum wages for all hours worked;
- 10 (c) Whether Defendants failed to provide Plaintiff and class members with
11 meal periods;
- 12 (d) Whether Defendants failed to authorize and permit Plaintiff and class
13 members to take rest periods;
- 14 (e) Whether Defendants provided Plaintiff and class members with
15 complete and accurate wage statements as required by California Labor
16 Code section 226(a);
- 17 (f) Whether Defendants maintained accurate payroll records as required by
18 California Labor Code section 1174(d);
- 19 (g) Whether Defendants failed to pay earned overtime wages, minimum
20 wages, and/or meal and rest period premiums due to Plaintiff and class
21 members upon their discharge;
- 22 (h) Whether Defendants failed timely to pay overtime wages, minimum
23 wages, and/or meal and rest period premiums due to Plaintiff and class
24 members during their employment;
- 25 (i) Whether Defendants failed to pay Plaintiff and/or class members for the
26 costs of mandatory physical examinations and/or drug testing;
- 27 (j) Whether Defendants failed to pay reporting time pay to Plaintiff and/or
28 class members;

- 1 (k) Whether Defendants failed to reimburse Plaintiff and class members for
2 necessary and required business-related expenditures and/or losses
3 incurred by them in the scope of their employment;
- 4 (l) Whether Defendants failed to timely provide Plaintiff and class
5 members written notice of the material terms of their employment with
6 Defendants as required by the California Wage Theft Prevention Act
7 and California Labor Code section 2810.5;
- 8 (m) Whether Defendants failed to provide Plaintiff and class members with
9 safety devices and safeguards, such as personal protective equipment;
- 10 (n) Whether Defendants engaged in unlawful and unfair business practices
11 in violation of California Business & Professions Code sections 17200,
12 *et seq.*; and
- 13 (o) The appropriate amount of damages, restitution, or monetary penalties
14 resulting from Defendants' violations of California law.

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

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

1 defined community of interest and typicality of claims, as demonstrated
2 herein. Plaintiff acknowledges that he has an obligation to make known
3 to the Court any relationship, conflicts or differences with any class
4 member. Plaintiff's attorneys, the proposed class counsel, are versed in
5 the rules governing class action discovery, certification, and settlement.
6 Plaintiff has incurred, and throughout the duration of this action, will
7 continue to incur costs and attorneys' fees that have been, are, and will
8 be necessarily expended for the prosecution of this action for the
9 substantial benefit of each class member.

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

6 52. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 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 53. 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 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) 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 55. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
22 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 nondiscretionary bonuses and incentive pay.

25 56. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1 ½) times 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 57. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 58. First, during the relevant period, Defendants had a policy and/or practice of
9 discouraging and impeding Plaintiff and class members from recording hours worked that
10 were outside of their scheduled shifts, in order to limit the amount of overtime employees
11 could accrue. In doing so, Defendants failed to implement a timekeeping system at their
12 jobsites and does not provide employees with any mechanism, such as a time clock or
13 electronic timekeeping system, to accurately track and record their hours worked. Instead,
14 Defendants' policy and/or practice is to simply pay employees, including Plaintiff and class
15 members, for the hours they are scheduled to work by requiring Plaintiff and class members to
16 report only their scheduled shift start- and end-times on a weekly timesheet, and failing to
17 track their actual hours worked. For instance, at the beginning of every workweek,
18 Defendants would require Plaintiff and class members to retroactively report their shift-start
19 and end-times for the previous workweek on a timesheet, but did not allow them to record any
20 actual hours worked that extended beyond their scheduled shifts. Because Defendants both
21 failed to provide Plaintiff and class members with any mechanism to record their actual hours
22 worked and/or prohibited them from recording their actual hours worked, Plaintiff and class
23 members were not paid for all hours worked.

24 59. In addition, Defendants' timekeeping practices do not allow employees to track
25 the actual start and stop times of meal periods or report a short, missed, or interrupted meal
26 period (*see supra*). The timesheets that Plaintiff and class members filled out at the end of
27 their workweek were not provided to them during their shifts to accurately record daily meal
28 period start and stop times in real-time. As with their shift-start and end-times, Defendants

1 required Plaintiff and class members to retroactively record meal period start-times and stop-
2 times on these timesheets at the start of the following week, and required that Plaintiff and
3 class members uniformly record that they had taken compliant meal periods at their pre-set
4 meal start and stop-times, in order to strictly limit meal penalties that Defendants would
5 otherwise owe. Thus, Defendants would record that compliant meal periods were taken, even
6 if that was not the case. Because Defendants failed to implement any sort of timekeeping
7 system for tracking and recording meal periods in real-time and prohibited employees from
8 recording a short, missed, or interrupted meal period, Plaintiff and class members were not
9 paid for all hours worked.

10 60. Second, Defendants had and continue to have, a company-wide policy and/or
11 practice of understaffing their jobsites while assigning heavy workloads, which led to Plaintiff
12 and class members to work through meal periods or have their meal periods interrupted.
13 Defendants' uniform policies and/or practices of understaffing and assigning heavy workloads
14 coupled with a company-wide policy and/or practice of failing to schedule meal periods, led to
15 a failure to provide Plaintiff and class members with adequate meal period coverage because
16 there were too few employees on duty to handle the workload.

17 61. Moreover, Defendants maintained a company-wide on-premises meal period
18 policy, which mandated that Plaintiff and class members sometimes remain on the jobsite
19 premises during their meal periods. For example, Plaintiff was required to remain on
20 Defendants' jobsites or premises during his meal periods, in order to secure the construction
21 site (preventing people from walking in) or to perform traffic control. Because Plaintiff and
22 class members were restricted from leaving the work premises during meal periods, they were
23 denied the ability to use their meal periods freely for their own purposes. For example,
24 Plaintiff and class members were unable to run personal errands because they were unable to
25 leave the work premises. Thus, Defendants effectively maintained control over Plaintiff and
26 class members during their meal periods.

27 62. As a result, Plaintiff and class members were not always afforded uninterrupted
28 30-minute meal periods during shifts when they were entitled to receive a meal period. For

1 example, Plaintiff was required to work through part or all of his meal periods and attend to
2 work-related matters at the construction site at least 2-3 times per month due to lack of meal
3 period coverage, time for which he was not paid. Thus, Plaintiff and class members missed or
4 had meal periods interrupted in order to complete and fulfill their work-related duties.
5 Defendants did not pay Plaintiff and class members for the time they continued to perform
6 tasks and remain on duty during meal periods.

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

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

19 **SECOND CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 21 **Minimum Wages** 22 **(Against all Defendants)**

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

25 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
26 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
27 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
28 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as

1 “the time during which an employee is subject to the control of an employer, and includes all
2 the time the employee is suffered or permitted to work, whether or not required to do so.”
3 Cal. Code. Regs. tit. 8, § 11160(2)(J) (defining “Hours Worked”).

4 67. As set forth above, Defendants had a company-wide policy and/or practice of
5 only paying Plaintiff and class members for their scheduled shifts, rather than their actual
6 hours worked, because Defendants had no timekeeping system in place at their jobsites to
7 track hours worked outside of scheduled shifts or during meal periods. Defendants instructed
8 Plaintiff and class members to retroactively report the hours they were scheduled to work the
9 prior week, using handwritten timesheets, and failed to permit employees to accurately track
10 and record missed or interrupted meal periods. As a result of these practices, Defendants
11 failed to record all hours worked outside of their scheduled shifts and/or during unpaid meal
12 periods. Additionally, due to Defendants’ company-wide policies and/or practices of
13 understaffing and implementing heavy workloads, failure to schedule meal periods,
14 subsequent lack of meal period coverage, and requirement that Plaintiff and class members
15 remain on the jobsite premises during meal periods, Plaintiff and class members were required
16 to work off-the-clock during meal periods.

17 68. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
18 and class members. To the extent that these off-the-clock hours did not qualify for overtime
19 premium payment, Defendants did not pay at least minimum wages for those hours worked
20 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
21 1198.

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

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THIRD CAUSE OF ACTION
Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)

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

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

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

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

74. As stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, Defendants maintained and implemented a company-wide practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for

1 compliant meal periods. For example, when scheduled to begin work at 7:00 a.m. at times,
2 Plaintiff would not be able to take his meal periods until 1:00 p.m., which was actually his
3 sixth hour of work.

4 75. Furthermore, as stated, Defendants maintained a company-wide on-premises
5 meal period policy, which mandated that Plaintiff and class members sometimes remain on or
6 near the jobsite premises during their meal periods. Because Plaintiff and class members were
7 restricted from leaving the work premises during meal periods, they were denied the ability to
8 use their meal periods freely for their own purposes. For example, Plaintiff and class
9 members were unable to run personal errands because they were unable to leave the work
10 premises, and would instead be required to secure the construction site (preventing people
11 from walking in) or perform traffic control during their unpaid meal periods. Thus,
12 Defendants effectively maintained control over Plaintiff and class members during meal
13 periods.

14 76. Defendants' practices and/or policies of understaffing and assigning heavy
15 workloads, coupled with their failure to schedule meal periods and requirement to remain on-
16 premises, prevented Plaintiff and class members from taking all compliant meal periods to
17 which they were entitled. As a result, Plaintiff and class members were forced to work in
18 excess of five (5) hours before taking a meal period and, at times, had their meal periods
19 interrupted and/or had to forgo their meal periods altogether. For example, during his
20 employment, Plaintiff worked through meal periods when he remained on-premises and had
21 meal periods interrupted at least 2-3 times per month in order to ensure that he and other
22 employees were finishing their tasks and attending to various matters on the construction site,
23 such as assisting with trucks arriving to unload materials and clients conducting site
24 inspections.

25 77. Additionally, Defendants did not provide Plaintiff and class members with
26 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
27 day. During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per
28 day every shift, but was never provided a second 30-minute meal period. Plaintiff and class

members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

78. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiff and class members were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiff and class members meal period premiums when meal periods were late, interrupted, shortened, or missed, because, as stated above, Defendants did not have a procedure in place to accurately track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period. Defendants required Plaintiff and class members to retroactively record meal start and stop-times on weekly timesheets at the start of the following workweek, and required that they uniformly record that they had taken compliant meal periods at certain meal start and stop-times in order to strictly limit the meal penalties Defendants would otherwise owe.

79. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

FOURTH CAUSE OF ACTION

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

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

1 and every allegation set forth above.

2 82. At all relevant times herein set forth, the applicable IWC Wage Order and
3 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
4 members' employment by Defendants.

5 83. At all relevant times, the applicable IWC Wage Order provides that "[e]very
6 employer shall authorize and permit all employees to take rest periods, which insofar as
7 practicable shall be in the middle of each work period" and that the "rest period time shall be
8 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
9 hours or major fraction thereof" unless the total daily work time is less than three and one-half
10 (3 ½) hours.

11 84. At all relevant times, California Labor Code section 226.7 provides that no
12 employer shall require an employee to work during any rest period mandated by an applicable
13 order of the California IWC. To comply with its obligation to authorize and permit rest
14 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
15 employer must "relinquish any control over how employees spend their break time, and
16 relieve their employees of all duties—including the obligation that an employee remain on
17 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
18 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
19 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
20 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
21 that a required rest period was not authorized and permitted.

22 85. During the relevant time period, Defendants regularly failed to authorize and
23 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
24 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
25 practices, including understaffing and implementing heavy workloads, prevented Plaintiff and
26 class members from being able to take rest periods. Defendants' management erroneously
27 informed Plaintiff and class members that they were only entitled to one (1) 15-minute rest
28 period per shift, regardless of the shift length, which was to be combined with their 30-minute

1 meal period, for a total 45-minute block per shift. Thus, Defendants also wholly failed to
2 schedule compliant, timely rest periods, which, coupled with Defendants' failure to authorize
3 rest periods and provide adequate rest period coverage, further led to Plaintiff and class
4 members not being authorized and permitted to take compliant rest periods.

5 86. Furthermore, Defendants maintained and implemented a company-wide on-
6 premises rest period policy, which mandated that Plaintiff and class members remain on the
7 premises during their rest periods. Because Plaintiff and class members were restricted from
8 leaving Defendants' jobsites during rest periods, they were denied the ability to use their rest
9 periods freely for their own purposes, such as running personal errands. Thus, Defendants
10 effectively maintained control over Plaintiff and class members during rest periods.

11 87. As a result of Defendants' practices and policies, Plaintiff and class members
12 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
13 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
14 Plaintiff was regularly deprived of the rest periods to which he was entitled.

15 88. Defendants have also engaged in a company-wide practice and/or policy of not
16 paying all rest period premiums owed when compliant rest periods are not authorized and
17 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
18 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
19 the applicable IWC Wage Order.

20 89. Defendants' conduct violates the applicable IWC Wage Order and California
21 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
22 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
23 compensation for each work day that a compliant rest period was not authorized and
24 permitted.

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1 **FIFTH CAUSE OF ACTION**

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

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

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

12 92. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
16 inclusive dates of the period for which the employee is paid; and all applicable hourly rates in
17 effect during the pay period, including overtime rates of pay, and the corresponding number of
18 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
19 226(a)(2), 226(a)(5), 226(a)(6), and 226(a)(9).

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

1 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
2 period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

3 94. Second, and separate from these violations, Defendants issued uniform wage
4 statements to Plaintiff and Subclass members that failed to list “the inclusive dates of the
5 period for which the employee is paid” in violation of section 226(a)(6). The purpose of
6 section 226(a)(6) is to provide California employees accurate and complete information so
7 that employees can promptly and easily determine from their wage statements alone the
8 amount of the gross wages or net wages paid to employees during the pay period in question.
9 For example, Plaintiff’s wage statements only state the “Period End Date” and fails to provide
10 the inclusive dates of the period for which Plaintiff was paid (i.e., the start date of the pay
11 period), in clear violation of section 226(a)(6). Plaintiff and Subclass members are deemed to
12 have suffered injury for Defendants’ failure to provide accurate and complete wage statements
13 as required under the California Labor Code.

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

21 96. California Labor Code section 1198 provides that the maximum hours of work
22 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
23 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
24 employment of any employees for longer hours than those fixed by the order or under
25 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
26 Wage Order, employers are required to keep accurate time records showing when the
27 employee begins and ends each work period and meal period. During the relevant time
28 period, Defendants engaged in company-wide practices and/or policies of failing to record

1 actual hours worked, and thereby failed to keep accurate records of work period and meal
2 period start and stop times for Plaintiff and Subclass members, in violation of section 1198.
3 Also, as stated, Defendants engaged in a company-wide practice and/or policy of falsifying
4 Plaintiff's and Subclass members' time records by recording that compliant meal periods were
5 taken regardless of if or when meal periods were actually taken, and thereby failed to keep
6 accurate records of meal start and end times for Plaintiff and Subclass members. Furthermore,
7 in light of Defendants' failure to provide Plaintiff and Subclass members with second 30-
8 minute meal periods to which they were entitled, Defendants kept no records of meal start and
9 end times for second meal periods.

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

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

24 **SIXTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 26 **Termination** 27 **(Against all Defendants)**

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

1 and every allegation set forth above.

2 100. This cause of action is dependent upon, and wholly derivative of, the overtime
3 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
4 Plaintiff and those class members no longer employed by Defendants upon their termination.

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

12 102. Defendants willfully failed to pay Plaintiff and class members who are no
13 longer employed by Defendants the earned and unpaid wages set forth above, including but
14 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
15 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
16 employ.

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

23 **SEVENTH CAUSE OF ACTION**

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

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

1 105. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
3 Plaintiff and those class members.

4 106. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed.

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

14 108. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 109. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 class members all wages due including, but not limited to, overtime wages, minimum wages,
22 and/or meal and rest period premiums within the time periods specified by California Labor
23 Code section 204.

24 110. Defendants' failure to pay Plaintiff and class members all wages due violates
25 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

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

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

6 112. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: “[w]hen
12 tools or equipment are required by the employer or are necessary to the performance of a job,
13 such tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage provided herein may be
15 required to provide and maintain hand tools and equipment customarily required by the trade
16 or craft.”

17 113. During the relevant time period, Plaintiff and class members were required to
18 use their personal cellular phones to carry out their job duties, but Defendants failed to
19 reimburse them for the costs of their work-related cellular phone expenses. For example,
20 Plaintiff would use his personal cellular phone on a daily basis for at least five (5) minutes per
21 instance to converse with his managers and foreman about work-related matters. Although
22 Defendants required Plaintiff and class members to utilize their personal cellular phones to
23 carry out their work-related responsibilities, Defendants failed to reimburse them for these
24 costs.

25 114. Additionally, during the relevant time period, Defendants, on a company-wide
26 basis, required Plaintiff and class members to purchase special safety shoes, such as steel-toed
27 boots, which they were required to wear while at work and necessary for the completion of
28 their work-related duties. Plaintiff and class members purchased steel-toed boots to wear at

Defendants' jobsites, but were not reimbursed for these costs. For example, during the course of his employment, Plaintiff spent approximately \$700 out-of-pocket to purchase required steel-toed boots in order to perform his work duties. Thus, Defendants failed to provide tools and equipment to Plaintiff and class members, forcing them to procure their own, and failed to reimburse Plaintiff and class members for these costs.

115. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, such company phones, to be used for fulfilling work-related tasks, and steel-toed boots. Or, Defendants could have reimbursed employees for their cellular phone and boot expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class members.

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

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

NINTH CAUSE OF ACTION

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

(Against all Defendants)

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

119. 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, 222.5, 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 516,

1 1182.12, 2810.5, 6401 and 6403.

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

- 4 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
5 Wage Order for Defendants' failure to compensate Plaintiff and other
6 aggrieved employees with all required overtime pay, as alleged herein;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198, and the applicable IWC Wage Order for Defendants' failure to
9 compensate Plaintiff and other aggrieved employees with at least
10 minimum wages for all hours worked, as alleged herein;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
13 and other aggrieved employees with meal periods, as alleged herein;
- 14 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
15 applicable IWC Wage Order for Defendants' failure to authorize and
16 permit Plaintiff and other aggrieved employees to take rest periods, as
17 alleged herein;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
22 IWC Wage Order for failure to maintain payroll records, as alleged
23 herein;
- 24 (g) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment to Plaintiff and other aggrieved employees, as
26 alleged herein;
- 27 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay
28 Plaintiff and other aggrieved employees all earned wages upon

1 termination, as alleged herein;

2 (i) Violation of California Labor Code section 222.5 for failure to pay the
3 costs of mandatory physical examinations and/or drug testing to other
4 aggrieved employees, as set forth below;

5 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
6 Order for failing to pay reporting time pay to other aggrieved
7 employees, as set forth below;

8 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
9 and other aggrieved employees for all business expenses necessarily
10 incurred, as alleged herein;

11 (l) Violation of Labor Code section 2810.5 for failure to provide notice of
12 material terms of employment to Plaintiff and other aggrieved
13 employees, as set forth below; and

14 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
15 Plaintiff and other aggrieved employees with safety devices and
16 safeguards, such as personal protective equipment, as set forth below.

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

20 122. During the relevant time period, Defendants implemented, on a company-wide
21 basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory
22 drug test and/or physical examination, but required them to do so at their own expense.
23 Defendants had a company-wide policy requiring that all employees, including other
24 aggrieved employees, travel to a specified medical facility using their own personal vehicles
25 or alternate transportation to undergo physical examinations and/or drug testing. At all times,
26 Defendants were in control of scheduling the date and time for the testing and/or examination,
27 selecting the provider/facility where the testing and/or examination was to take place, and
28 determining the scope of the testing and/or examination.

1 123. However, Defendants did not compensate other aggrieved employees for the
2 time they spent traveling to and from their drug tests and/or physical examinations, or for the
3 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
4 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
5 practice of not paying for all costs other aggrieved employees incurred obtaining mandatory
6 drug tests and/or physical examinations violates California Labor Code section 222.5. Other
7 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
8 sections 2699(a), (f), and (g).

9 124. California Labor Code section 1198 makes it illegal to employ an employee
10 under conditions of labor that are prohibited by the applicable wage order. California Labor
11 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
12 shall be the ... standard conditions of labor for employees. The employment of any employee
13 ... under conditions of labor prohibited by the order is unlawful."

14 125. California Code of Regulations, Title 8, section 11160(5)(A) provides that
15 "[e]ach workday an employee is required to report for work and does report, but is not put to
16 work or is furnished less than half said employee's usual or scheduled day's work, the
17 employee shall be paid for half the usual or scheduled day's work, but in no event for less
18 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
19 shall not be less than the minimum wage." The "primary purpose of the reporting time
20 regulation" is "to guarantee at least partial compensation for employees who report to work
21 expecting to work a specified number of hours, and who are deprived of that amount because
22 of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch*
23 *Cellular*, 209 Cal. App. 4th 556 (2012).

24 126. Upon information and belief, Defendants violated California Labor Code
25 section 1198 and California Code of Regulations, Title 8, section 11160(5), because
26 Defendants failed to pay other aggrieved employees reporting time pay when they reported to
27 work for their scheduled shift but were put to work for less than half of the regular schedule.

28 127. During the relevant period, Defendants had a company-wide practice of

1 sending other aggrieved employees home early from their shifts, including before they had
2 worked at least half of their regular shift, but would not pay other aggrieved employees for
3 half of their scheduled shift. Although other aggrieved employees would report to work based
4 on the schedule that Defendants provided to them, Defendants would send them home before
5 they had worked at least half of their scheduled shifts without giving them reporting time pay.

6 128. Accordingly, other aggrieved employees were not properly compensated with
7 reporting time pay in violation of California Labor Code section 1198 and California Code of
8 Regulations Title 8, section 11160(5). Other aggrieved employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 129. California's Wage Theft Prevention Act was enacted to ensure that employers
11 provide employees with basic information material to their employment relationship at the
12 time of hiring, and to ensure that employees are given written and timely notice of any
13 changes to basic information material to their employment. Codified at California Labor
14 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
15 employer must provide written notice to employees containing basic and material payroll
16 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
17 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
18 overtime, the regular payday designated by the employer, and any allowances claims as part
19 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
20 (C).

21 130. During the relevant time period, Defendants failed to provide Plaintiff and
22 other aggrieved employees with written notice that lists all the requisite information set forth
23 in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other
24 aggrieved employees with written notice of basic information regarding their employment
25 with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved
26 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 2699(a), (f), and (g).

28 131. At all relevant times herein, California Labor Code section 6401 provides that

1 employers must furnish and use safety devices and safeguards, and adopt and use practices,
2 means, methods, operations, and processes which are reasonably adequate to render the
3 employment and place of employment safe and healthy. California Labor Code Section 6401
4 further provides that an employer must do everything reasonably necessary to protect the life,
5 safety and health of its employees.

6 132. Defendants, on a company-wide basis, failed to provide Plaintiff and other
7 aggrieved employees with personal protective equipment, such as steel-toed boots, to keep
8 them safe in the workplace. Despite the fact that Defendants required employees to wear
9 certain protective equipment, including steel-toed boots, Defendants failed to provide such
10 reasonably necessary equipment to Plaintiff and other aggrieved employees to keep them safe.
11 Thus, Defendants' failure to provide Plaintiff and other aggrieved employees with safety
12 devices and safeguards violates Labor Code sections 6401 and 6403. Plaintiff and other
13 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
14 sections 2699(a), (f), and (g).

15 **TENTH CAUSE OF ACTION**

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

17 **Unlawful Business Practices**

18 **(Against all Defendants)**

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

21 134. Defendants are "persons" as defined by California Business & Professions
22 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
23 and/or associations.

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

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (g) Failing to reimburse Plaintiff and class members for all business

1 expenses necessarily incurred in violation of California Labor Code
2 sections 2802, as alleged herein;

3 (h) Failing to provide written notice of information material to Plaintiff's
4 and class members' employment with Defendants in violation of
5 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below;
6 and

7 (i) Failing to provide Plaintiff and class members with safety devices and
8 safeguards, such as personal protective equipment, in violation of
9 California Labor Code sections 6401 and 6403, as set forth below.

10 138. At all relevant times herein, California's Wage Theft Prevention Act was
11 enacted to ensure that employers provide employees with basic information material to their
12 employment relationship at the time of hiring, and to ensure that employees are given written
13 and timely notice of any changes to basic information material to their employment. Codified
14 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
15 time of hiring, an employer must provide written notice to employees containing basic and
16 material payroll information, including, among other things, the rate(s) of pay and basis
17 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
18 including any rates for overtime, the regular payday designated by the employer, and any
19 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
20 Code § 2810.5(a)(1)(A)-(C).

21 139. At all relevant times, on information and belief, Defendants failed, on a
22 company-wide basis, to provide written notice to Plaintiff and class members that lists the
23 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
24 to provide Plaintiff and class members with written notice of basic information regarding their
25 employment with Defendants is in violation of Labor Code sections 2810.5(a)(1)(A)-(C).

26 140. At all relevant times herein, California Labor Code section 6401 provides that
27 employers must furnish and use safety devices and safeguards, and adopt and use practices,
28 means, methods, operations, and processes which are reasonably adequate to render the

1 employment and place of employment safe and healthy. California Labor Code Section 6401
2 further provides that an employer must do everything reasonably necessary to protect the life,
3 safety and health of its employees.

4 141. Defendants, on a company-wide basis, failed to provide Plaintiff and class
5 members with personal protective equipment, such as steel-toed boots, to keep them safe in
6 the workplace. Despite the fact that Defendants required employees to wear certain protective
7 equipment, including steel-toed boots, Defendants failed to provide such reasonably necessary
8 equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to
9 provide Plaintiff and class members with safety devices and safeguards violates Labor Code
10 sections 6401 and 6403.

11 142. As a result of the violations of California law herein described, Defendants
12 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
13 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
14 herein.

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

21 **ELEVENTH CAUSE OF ACTION**

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

23 **Unfair Business Practices**

24 **(Against all Defendants)**

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

27 145. Defendants are "persons" as defined by California Business & Professions
28 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 146. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
4 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
5 seeks to enforce important rights affecting the public interest within the meaning of Code of
6 Civil Procedure section 1021.5.

7 147. Defendants' activities, namely Defendants' company-wide practice and/or
8 policy of not paying Plaintiff and class members meal and rest period premiums due to them
9 under Labor Code section 226.7, deprived Plaintiff and class members of the compensation
10 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
11 provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate
12 employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238
13 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
14 Plaintiff and class members as part of their employment with Defendants, and thus
15 Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
16 business practice in violation of California Business & Professions Code sections 17200, *et*
17 *seq. (Id.)*

18 148. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on any unfair business practice. In the instant case, Defendants' policies
20 and practices have violated the spirit of California's meal and rest period laws and constitute
21 acts against the public policy behind these laws.

22 149. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
23 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
24 benefits implemented by section 226.7 withheld and retained by Defendants during a period
25 that commences four years prior to the filing of this complaint; a permanent injunction
26 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
27 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
28 Procedure section 1021.5 and other applicable laws; and an award of costs.

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

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

9 **Class Certification**

10 2. That this case be certified as a class action;

11 3. That Plaintiff be appointed as the representative of the Class and Subclass;

12 4. That counsel for Plaintiff be appointed as class counsel.

13 **As to the First Cause of Action**

14 5. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
16 pay all overtime wages due to Plaintiff and class members;

17 6. For general unpaid wages at overtime wage rates and such general and special
18 damages as may be appropriate;

19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due, or as otherwise provided by law;

21 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code section 1194(a); and

23 9. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Second Cause of Action**

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
28 Order by willfully failing to pay minimum wages to Plaintiff and class members;

1 11. For general unpaid wages and such general and special damages as may be
2 appropriate;

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

5 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 15. For such other and further relief as the Court may deem equitable and
9 appropriate.

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

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

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

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

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

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

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

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

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

8 27. For pre-judgment interest on any unpaid rest period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

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

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
17 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
18 itemized wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 and/or meal and rest period premiums owed at the time of termination of the employment of
3 Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

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

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

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Seventh Cause of Action**

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

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

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

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 47. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Eighth Cause of Action

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

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

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

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

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

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by failing to pay for costs of mandatory physical exams and/or drug testing); 1198 and the applicable IWC Wage Order (by failing to pay reporting time pay); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide notice of material terms of employment); and 6401 and 6403 (by failing to provide personal protective equipment).

55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

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

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing timely to pay Plaintiff and class members all earned wages during employment, failing to reimburse Plaintiff and class members for business-related expenses, failing to provide written notice of material terms of employment, and failing to provide Plaintiff and class members with safety devices and safeguards, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

61. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections

17200, *et seq.*;

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

63. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

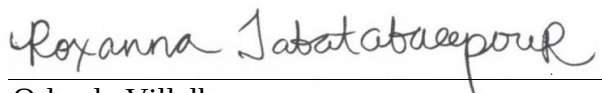
68. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: September 13, 2021

Respectfully submitted,

Capstone Law APC

By: 

Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiff Alberto Vargas Rios

EXHIBIT “A”



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July 8, 2021

VIA ONLINE SUBMISSION

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

Subject: *Alberto Vargas Rios v. MCH Electric, Inc.*

Dear PAGA Administrator:

This office represents Alberto Vargas Rios in connection with his claims under the California Labor Code. Mr. Vargas Rios was an employee of MCH ELECTRIC, INC. ("MCH").

The employer may be contacted directly at the address below:

MCH ELECTRIC, INC.
7693 LONGARD ROAD
LIVERMORE CA 94551

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

MCH employed Mr. Vargas Rios as an hourly paid, non-exempt Machine Operator from approximately September 2015 to October 2020. Mr. Vargas Rios worked for MCH at its various jobsites in and around the Bay Area. During the relevant time period, Mr. Vargas Rios typically worked eight (8) hours or more per day and five (5) days or more per week. His job duties included, without limitation, excavating, trenching, and adding conduit at MCH's various jobsites.

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

MCH’s Company-Wide and Uniform Payroll and HR Practices

MCH ELECTRIC, INC. is a California corporation, and owns and operates an underground infrastructure and electric construction services company. Upon information and belief, MCH maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Livermore, California for all non-exempt, hourly paid employees working for MCH in California, including Mr. Vargas Rios and other aggrieved employees. At all relevant times, MCH issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Vargas Rios and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

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

First, during the relevant period, MCH had a policy and/or practice of discouraging and impeding Mr. Vargas Rios and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. In doing so, MCH failed to implement a timekeeping system at its jobsites and does not provide employees with any mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, MCH's policy and/or practice is to simply pay employees, including Mr. Vargas Rios and other aggrieved employees, for the hours they are scheduled to work by requiring Mr. Vargas Rios and other aggrieved employees to report only their scheduled shift start- and end-times on a weekly timesheet, and failing to track their actual hours worked. For instance, at the beginning of every workweek, MCH would require Mr. Vargas Rios and other aggrieved employees to retroactively report their shift-start and end-times for the previous workweek on a timesheet, but did not allow them to record any actual hours worked that extended beyond their scheduled shifts. Because MCH both failed to provide Mr. Vargas Rios and other aggrieved employees with any mechanism to record their actual hours worked and/or prohibited them from recording their actual hours worked, Mr. Vargas Rios and other aggrieved employees were not paid for all hours worked.

In addition, MCH's timekeeping practices do not allow employees to track the actual start and stop times of meal periods or report a short, missed, or interrupted meal period (*see supra*). The timesheets that Mr. Vargas Rios and other aggrieved employees filled out at the end of their workweek were not provided to them during their shifts to accurately record daily meal period start and stop times in real-time. As with their shift-start and end-times, MCH required Mr. Vargas Rios and other aggrieved employees to retroactively record meal period start-times and stop-times on these timesheets at the start of the following week, and required that Mr. Vargas Rios and other aggrieved employees uniformly record that they had taken compliant meal periods at their pre-set meal start and stop times, in order to strictly limit meal penalties that MCH would otherwise owe. Thus, MCH would record that compliant meal periods were taken, even if that was not the case. Because MCH failed to implement any sort of timekeeping system for tracking and recording meal periods in real-time and prohibited employees from recording a short, missed, or interrupted meal period, Mr. Vargas Rios and other aggrieved employees were not paid for all hours worked.

Second, MCH required Mr. Vargas Rios and other aggrieved employees to report to distant jobsites and assignments, in their personal vehicles, but did not compensate them for their time spent traveling to and from these locations. For example, MCH required Mr. Vargas Rios to drive an hour or more (approximately 50 miles or more) from his home in Bay Point, California, to various jobsites, such as Napa and Milpitas, California, in order to arrive on-time for the start of his shift at 7:00 a.m. Due to MCH's timekeeping policies and/or procedures, Mr. Vargas Rios and other aggrieved employees were essentially forced to work off-the-clock, as time spent traveling to and from a jobsite was not tracked and compensated for employees. Thus, Mr. Vargas Rios and other aggrieved employees were not compensated for this travel time, despite being under the direction and control of MCH.

Third, MCH had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, which led Mr. Vargas Rios and other aggrieved employees to work through meal periods or have their meal periods interrupted. MCH's uniform policies and/or practices of understaffing and assigning heavy workloads coupled with a company-wide policy

and/or practice of failing to schedule meal periods, led to a failure to provide Mr. Vargas Rios and other aggrieved employees with adequate meal period coverage because there were too few employees on duty to handle the workload.

Moreover, MCH maintained a company-wide on-premises meal period policy, which mandated that Mr. Vargas Rios and other aggrieved employees sometimes remain on the jobsite premises during their meal periods. For example, Mr. Vargas Rios was required to remain on MCH's jobsites or premises during his meal periods, in order to secure the construction site (preventing people from walking in) or to perform traffic control. Because Mr. Vargas Rios and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Vargas Rios and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, MCH effectively maintained control over Mr. Vargas Rios and other aggrieved employees during their meal periods.

As a result, Mr. Vargas Rios and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Vargas Rios was required to work through part or all of his meal periods and attend to work-related matters at the construction site at least 2-3 times per month due to lack of meal period coverage, time for which he was not paid. Thus, Mr. Vargas Rios and other aggrieved employees missed or had meal periods interrupted in order to complete and fulfill their work-related duties. MCH did not pay Mr. Vargas Rios and other aggrieved employees for the time they continued to perform tasks and remain on duty during meal periods.

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

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

MCH's failure to pay Mr. Vargas Rios and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Vargas Rios and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11160(2)(J) (defining “Hours Worked”).

As set forth above, during the relevant time period, MCH had a company-wide policy and/or practice of only paying Mr. Vargas Rios and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because MCH had no timekeeping system in place at its jobsites to track hours worked outside of scheduled shifts or during meal periods. MCH instructed Mr. Vargas Rios and other aggrieved employees to retroactively report the hours they were scheduled to work the prior week, using handwritten timesheets, and failed to permit employees to accurately track and record missed or interrupted meal periods. Moreover, due to MCH’s timekeeping policies, Mr. Vargas Rios and other aggrieved employees were not compensated properly for the time spent traveling to and from distant jobsites. As a result of these practices, MCH failed to record all hours worked outside of their scheduled shifts and/or during unpaid meal periods. Additionally, due to MCH’s company-wide policies and/or practices of understaffing and implementing heavy workloads, failure to schedule meal periods, subsequent lack of meal period coverage, and requirement that Mr. Vargas Rios and other aggrieved employees remain on the jobsite premises during meal periods, Mr. Vargas Rios and other aggrieved employees were required to work off-the-clock during meal periods.

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

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

Accordingly, MCH regularly failed to pay at least minimum wages to Mr. Vargas Rios and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Vargas Rios and other aggrieved employees are entitled

to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated above, MCH had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Vargas Rios and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, MCH maintained and implemented a company-wide practice of failing to schedule meal periods, which further caused Mr. Vargas Rios and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, when scheduled to begin work at 7:00 a.m., at times, Mr. Vargas Rios would not be able to take his meal periods until 1:00 p.m., which was actually his sixth hour of work.

Furthermore, as stated, MCH maintained a company-wide on-premises meal period policy, which mandated that Mr. Vargas Rios and other aggrieved employees sometimes remain on or near the jobsite premises during their meal periods. Because Mr. Vargas Rios and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Vargas Rios and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises, and would instead be required to secure the construction site (preventing people from walking in) or perform traffic control during their unpaid meal periods. Thus, MCH effectively maintained control over Mr. Vargas Rios and other aggrieved employees during meal periods.

MCH's practices and policies prevented Mr. Vargas Rios and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Vargas Rios and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Vargas Rios worked through meal periods when he remained on-premises and had meal periods interrupted at least 2-3 times per month in order to ensure that he and other employees were finishing their tasks and attending to various matters on the construction site, such as assisting with trucks arriving to unload materials and clients conducting site inspections.

Additionally, MCH did not provide Mr. Vargas Rios and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Vargas Rios worked shifts in excess of ten (10) or more hours per day every shift, but was never provided a second 30-minute meal period. Mr. Vargas Rios and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

MCH knew or should have known that as a result of its policies and/or practices, that Mr. Vargas Rios and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MCH further knew or should have known that it did not pay Mr. Vargas Rios and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted, because, as stated above, MCH did not have a procedure in place to accurately track the start and stop times of meal periods or to allow employees to report a late, short, missed, or interrupted meal period. MCH required Mr. Vargas Rios and other aggrieved employees to retroactively record meal start and stop-times on weekly timesheets at the start of the following workweek, and required that they uniformly record that they had taken compliant meal periods at certain meal start and stop-times in order to strictly limit the meal penalties MCH would otherwise owe.

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

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

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, MCH regularly failed to authorize and permit Mr. Vargas Rios and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MCH’s company-wide practices, including understaffing and implementing heavy workloads, prevented Mr. Vargas Rios and other aggrieved employees from being relieved of all duty to take their rest periods. MCH’s management erroneously informed Mr. Vargas Rios and other aggrieved employees that they were only entitled to one (1) 15-minute rest period per shift, regardless of the shift length, which was to be combined with their 30-minute meal period, for a total 45-minute block per shift. Thus, MCH also wholly failed to schedule compliant, timely rest periods, which, coupled with MCH’s failure to provide adequate rest period coverage, further led to Mr. Vargas Rios and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, MCH maintained a company-wide on-premises rest period policy, which mandated that Mr. Vargas Rios and other aggrieved employees remain on the premises during their rest periods. Because Mr. Vargas Rios and other aggrieved employees were restricted from leaving MCH’s jobsites during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MCH effectively maintained control over Mr. Vargas Rios and other aggrieved employees during rest periods.

As a result of MCH’s practices and policies, Mr. Vargas Rios and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Vargas Rios was regularly deprived of the rest periods to which he was entitled.

MCH also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that MCH did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MCH did not pay other aggrieved employees at the correct rate of pay for premiums because MCH failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MCH has not provided Mr. Vargas Rios and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set

forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MCH has knowingly and intentionally provided Mr. Vargas Rios and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MCH issued uniform wage statements to Mr. Vargas Rios and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the inclusive dates of the period for which the employee is paid; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, MCH violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(6), and 226(a)(9).

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

Second, and separate from these violations, MCH issued uniform wage statements to Mr. Vargas Rios and other aggrieved employees that failed to list “the inclusive dates of the period for which the employee is paid” in violation of section 226(a)(6). The purpose of section 226(a)(6) is to provide California employees accurate and complete information so that employees can promptly and easily determine from their wage statements alone the amount of the gross wages or net wages paid to employees during the pay period in question. For example, Mr. Vargas Rios’s wage statements only state the “Period End Date” and fails to provide the inclusive dates of the period for which Mr. Vargas Rios was paid (i.e., the start date of the pay period), in clear violation of section 226(a)(6).

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

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

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

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

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following

month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, MCH willfully failed to pay Mr. Vargas Rios and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

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

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

MCH willfully failed to pay Mr. Vargas Rios and other aggrieved employees who are no longer employed by MCH the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MCH's employ.

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

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

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

During the relevant time period, MCH implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, MCH had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, MCH was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, MCH did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. MCH's policy and/or practice of

not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11160 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11160(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

MCH violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5), because MCH failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. MCH had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. For example, other aggrieved employees would report to work, but would be sent home early by MCH's management after MCH determined that work could not proceed due to inclement weather. Although other aggrieved employees would report to work based on the schedule that MCH provided to them, MCH would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: “[w]hen

tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, Mr. Vargas Rios and other aggrieved employees were required to use their personal cellular phones to carry out their job duties, but MCH failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Vargas Rios would use his personal cellular phone on a daily basis for at least five (5) minutes per instance to converse with his managers and foreman about work-related matters. Although MCH required Mr. Vargas Rios and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, MCH failed to reimburse them for these costs.

Second, during the relevant time period, MCH had a company-wide policy of requiring Mr. Vargas Rios and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for the costs of travel, including mileage. For example, Mr. Vargas Rios and other aggrieved employees were required to drive their personal vehicles to and from various jobsites, including during their shifts, but were not reimbursed for their travel expenses or mileage.

Also, as stated, MCH had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, MCH was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. MCH gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of MCH. Although MCH required Mr. Vargas Rios and/or other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, MCH never reimbursed them for their travel expenses.

Third, during the relevant time period, MCH, on a company-wide basis, required Mr. Vargas Rios and other aggrieved employees to purchase special safety shoes, such as steel-toed boots, which they were required to wear while at work and necessary for the completion of their work-related duties. Mr. Vargas Rios and other aggrieved employees purchased steel-toed boots to wear at MCH’s jobsites, but were not reimbursed for these costs. For example, during the course of his employment, Mr. Vargas Rios spent approximately \$700 out-of-pocket to purchase required steel-toed boots in order to perform his work duties. Thus, MCH failed to provide tools and equipment to Mr. Vargas Rios and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Vargas Rios and other aggrieved employees for these costs.

MCH could have provided Mr. Vargas Rios and other aggrieved employees with the actual tools for use on the job, including company phones and vehicles, to be used for fulfilling work-related tasks, as well as steel-toed boots. Or, MCH could have reimbursed Mr. Vargas Rios and other aggrieved employees for the costs of their cellular phone usage, mileage, travel expenses, and boot expenses. Instead, MCH passed these operating costs off onto Mr. Vargas Rios and other aggrieved employees.

Thus, MCH had, and continues to have, a company-wide policy and/or practice of not reimbursing Mr. Vargas Rios and other aggrieved employees for expenses necessarily incurred in violation of

California Labor Code section 2802. Mr. Vargas Rios and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

MCH failed to provide Mr. Vargas Rios and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). MCH's failure to provide Mr. Vargas Rios and other aggrieved employees with written notice of basic information regarding their employment with MCH is in violation of Labor Code section 2810.5.

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

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

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

MCH, on a company-wide basis, failed to provide Mr. Vargas Rios and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that MCH required employees to wear certain personal protective equipment, including steel-toed boots, MCH failed to provide such reasonably necessary equipment to Mr. Vargas Rios and other aggrieved employees to keep them safe.

MCH's failure to provide Mr. Vargas Rios and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Vargas Rios and

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

California Labor Code § 558(a)

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

Accordingly, Mr. Vargas Rios seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Vargas Rios, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against MCH for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

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

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

Best Regards,



Mao Shiokura

Copy: MCH ELECTRIC, INC. (via U.S. Certified Mail)



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- Print your name and address on the reverse, so that we can return the card to you.
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2. Article Number (Transfer from service label)

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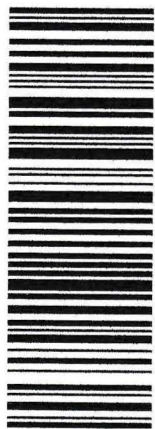
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **September 13, 2021**, I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Daphne C. Lin
daphnelin@tatp.com

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MCH ELECTRIC, INC

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☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

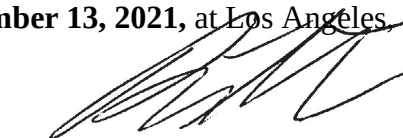
☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **September 13, 2021**, at Los Angeles, California.

Riley McIntire
Type or Print Name


Signature