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ELECTRONICALLY FILED
Superior Court of California
County of Alameda
12/07/2021

Chad Finke, Executive Officer / Clerk of the Court

By: Xian-xii Bowie Deputy

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

ROBERT DELL, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

NRC ENVIRONMENTAL SERVICES INC.;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. RG21114398

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2 and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff ROBERT DELL, an individual, on behalf of himself, all others similarly situated,
2 and on behalf of the people of the State of California and as an “aggrieved employee” under Labor
3 Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”), complains of
4 Defendant NRC ENVIRONMENTAL SERVICES INC.¹ (“Defendant”) and each of them, as
5 follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by NRC ENVIRONMENTAL SERVICES INC., in the
12 State of California who worked one or more pay periods since four
13 (4) years prior to the filing of this action to the present plus any
14 additional time during which the statutes of limitation for the causes
of action herein were tolled pursuant to Emergency Rule 9 of the
California Rules of Court, the ‘Emergency Rules Related to
COVID-19’. (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. From at least four (4) years prior to the filing of this action continuing to the present,
24 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
25 members. Plaintiff and Proposed Class members were not properly compensated for all hours
26

27 ¹ In light of a recent meet and confer with Defendant’s Counsel, Plaintiff’s Counsel recently
28 learned that US Ecology Illinois, Inc., US Ecology Vernon, Inc., and US Ecology, Inc. were
erroneously named as Defendants in this lawsuit because Plaintiff was an employee of NRC
Environmental Services Inc. during the relevant time period.

1 worked because Defendant failed to pay Plaintiff and the Proposed Class members for each and
2 every hour worked. Plaintiff and the Proposed Class were required to routinely work “off the
3 clock” and performed compensable activities during their meal periods but are not compensated
4 for this time. As such, Plaintiff and the Proposed Class were not paid for each and every hour
5 worked in violation of California law.

6 4. From at least four (4) years prior to the filing of this action and continuing to the
7 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
8 meal periods and failed to provide compliant meal periods. Further, Defendant failed to pay such
9 employees one (1) hour of pay at the employees’ regular rate of compensation for each workday
10 that the first meal period was not provided within the first (5) hours of the shift.

11 5. From at least four (4) years prior to the filing of this action and continuing to the
12 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
13 rest periods and failed to provide compliant rest periods. Defendant maintained a consistent policy
14 of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10)
15 minutes per four (4) hour work period or major fraction thereof. Plaintiff and the Proposed Class
16 are required to work four hour increments (or major fractions thereof) without being provided with
17 a ten (10) minute rest period. Further, Plaintiff and the Proposed Class were not compensated with
18 one (1) hour of wages at the regular rate of compensation for each missed rest period as required
19 by Labor Code § 226.7.

20 6. For at least one (1) year prior to the filing of this action and continuing to the
21 present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order
22 4-2001 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class accurate
23 itemized wage statements in writing showing the total hours worked and all applicable hourly rates
24 in effect during the pay period and the corresponding number of hours worked at each hourly rate
25 by the employee.

26 7. For at least three (3) years prior to the filing of this action continuing to the present,
27 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
28 the Proposed Class.

8. Plaintiff, on behalf of himself and all Proposed Class members brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages/overtime, meal and rest period penalties, accurate itemized wage statements, all wages due upon termination, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

9. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s failure to pay all wages and/or overtime, failure to provide lawful meal and rest periods, failure to maintain accurate meal period records, failure to provide accurate itemized wage statements, and failure to pay all wages due at the time of termination.

II.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

12. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Alameda and the State of California through their acts, and by their

violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of Alameda.

14. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

15. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

III.

PARTIES

A. PLAINTIFF

16. Plaintiff ROBERT DELL is a resident of California.

17. Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate regular rate of pay;
- b. Work without being provided compliant meal periods;
- c. Work without being provided compliant rest periods;
- d. Work without being provided accurate itemized wage statements.

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

20. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code

§2699(c).)

B. DEFENDANTS

21. Defendant NRC ENVIRONMENTAL SERVICES INC. is believed to be a Washington corporation operating within the State of California. Defendant's corporate address is believed to be 101S. Capitol Blvd. Suite 1000 Boise, ID 83702. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendant sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendant designated hereinafter as DOES when such identities become known.

23. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class members.

24. Furthermore, Defendant acted in all respects as the employers or joint employers of the Proposed Class. Defendant, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendant, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

25. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as

hourly employees and are paid on an hourly basis.

26. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

27. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid at the proper rate of pay. Plaintiff and Proposed Class members were not properly compensated for all hours worked at the appropriate rate of pay because Defendant required them to perform compensable activities during their meal periods for which no pay was provided. As such, this was time worked, but it was “off the clock” because Defendant failed to compensate them for this time worked at the appropriate rate of pay.

28. Plaintiff and all Proposed Class members have been forced by Defendant to work over five (5) hours in one day without being provided a compliant thirty (30) minute uninterrupted meal break and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders. Defendant also failed to inform Plaintiff and the members of the Proposed Class of their right to take compliant meal periods by way of a lawful policy.

29. Plaintiff and the Proposed Class are required to work four-hour increments (or major fractions thereof) without being provided with compliant ten (10) minute rest periods. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as required. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

30. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized statements that include the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate for Plaintiff and the Proposed Class.

31. Defendant willfully failed to pay wages and compensation, when Plaintiff and all

1 Proposed Class members quit or were discharged. This failure was willful, without legal
2 justification, and interfered with Plaintiff's and Class members' rights.

3 32. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

4 **V.**

5 **CLASS ACTION ALLEGATIONS**

6 33. Plaintiff brings this action on behalf of himself and all others similarly situated as
7 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
8 proposed class composed of and defined as follows:

9 All persons who are employed or have been employed as an hourly
10 employee by NRC ENVIRONMENTAL SERVICES INC., in the
11 State of California who worked one or more pay periods since four
12 (4) years prior to the filing of this action to the present plus any
13 additional time during which the statutes of limitation for the causes
14 of action herein were tolled pursuant to Emergency Rule 9 of the
15 California Rules of Court, the 'Emergency Rules Related to
16 COVID-19'. ("Proposed Class")

17 34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
18 amend or modify the class description with greater specificity, by division into subclasses, or by
19 limitation to particular issues.

20 35. This action has been brought and may properly be maintained as a class action
21 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
22 community of interest in the litigation and the Proposed Classes are easily ascertainable.

23 **A. NUMEROSITY**

24 36. The potential members of the Proposed Class as defined are so numerous that
25 joinder of all the members of the Proposed Class is impracticable. While the precise number of
26 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
27 that Defendant currently employs, and during the relevant time periods employed over 50 members
28 of the Proposed Class.

37. Plaintiff alleges that Defendant's employment records would provide information
as to the number and location of all Proposed Class members. Joinder of all members of the
Proposed Class is not practicable.

1 **B. COMMONALITY**

2 38. There are questions of law and fact common to the Proposed Class that predominate
3 over any questions affecting only individual Proposed Class members. These common questions
4 of law and fact include, without limitation:

5 a. Whether Defendant failed to pay wages and/or overtime compensation at
6 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
7 Labor Code §§ 510, 1194, and 1199;

8 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC Wage
9 Order 4-2001 or other applicable IWC Wage Orders by failing to provide required meal periods
10 throughout the term of employment and/or failing to compensate said employees one (1) hour of
11 wages at their regular rate of compensation in lieu of meal periods;

12 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-
13 2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout
14 the term of employment and/or failing to compensate said employees one (1) hour of wages at
15 their regular rate of compensation in lieu of rest periods;

16 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001
17 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
18 provide accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

19 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
20 compensation due and owing at the time that any Proposed Class member's employment with
21 Defendant terminated;

22 f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
23 Code by engaging in the acts previously alleged; and

24 g. Whether Plaintiff and the members of the Proposed Class are entitled to
25 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

26 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
27 acts alleged herein.

28 ///

1 **C. TYPICALITY**

2 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
3 all members of the Proposed Class sustained injuries and damages arising out of and caused by
4 Defendant's common course of conduct in violation of laws, regulations that have the force and
5 effect of law, and statutes as alleged herein.

6 **D. ADEQUACY OF REPRESENTATION**

7 40. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Proposed Class.

9 41. Counsel who represent Plaintiff and the Proposed Class are competent and
10 experienced in litigating large employment class actions.

11 **E. SUPERIORITY OF CLASS ACTION**

12 42. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Proposed Class members is not
14 practicable, and questions of law and fact common to the Proposed Class predominate over any
15 questions affecting only individual members of the Proposed Class. Each member of the Proposed
16 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
17 practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide
18 accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

19 43. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **AGAINST DEFENDANT FOR FAILURE TO PAY WAGES AND/OR OVERTIME**

5 **UNDER LABOR CODE §§ 510, 1194, AND 1199**

6 44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 45. Labor Code §§ 510, 1194, and 1199 require an employer to compensate its
9 employees at the minimum wage rate for all hours worked and compensate its employees at the
10 rate of no less than one and one-half times the regular rate of pay for any work in excess of eight
11 (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

12 46. Plaintiff and the Proposed Class were required to work on a regular and consistent
13 basis without receiving compensation for all hours worked at the proper rate of pay. Specifically,
14 Defendant routinely required Plaintiff and the Proposed Class to clock out for their meal periods
15 and continue working “off the clock” during the meal period. Plaintiff and the Proposed Class are
16 not compensated for this time. Plaintiff and the Proposed Class are not paid any wages for this
17 compensable time that was actually worked. As a result, Defendant fails to pay Plaintiff and the
18 Proposed Class members for each and every hour worked.

19 47. By their policy of requiring Plaintiff and members of the Proposed Class to work
20 without being paid all wages at their appropriate regular rate of pay and to work in excess of eight
21 (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the
22 rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor
23 Code §§ 510, 1194, and 1199.

24 48. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
25 members have been deprived of wages and/or overtime in amounts to be determined at trial, and
26 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
27 costs.

28 ///

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **AGAINST DEFENDANT FOR FAILURE TO PROVIDE MEAL PERIODS PURSUANT**
5 **TO LABOR CODE § 226.7 AND LABOR CODE § 512**

6 49. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 50. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
9 compensation for each meal period the employer fails to provide. Employees are entitled to a first
10 meal period of not less than thirty (30) minutes for shifts over five (5) hours, to be provided within
11 the first five (5) hours of the shift. This time must be free from all work duties and uninterrupted.

12 51. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 their rights associated with meal periods.

14 52. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
15 Defendant failed to provide Plaintiff and the Proposed Class with compliant meal periods of not
16 less than thirty (30) minutes as required by the Labor Code during the relevant time period.

17 53. Defendant has a consistent policy of failing to pay Plaintiff and the Proposed Class
18 one (1) hour of pay at the employees' regular rate of compensation for each workday that the first
19 meal period was not provided within the first (5) hours of the shift in violation of Labor Code §§
20 226.7 and 512. On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California
21 Supreme Court set forth the formula for calculating the one extra hour of premium pay that
22 employees are owed if an employer fails to provide a compliant meal period or rest break.
23 Specifically, the Court held that those premium payments must include the hourly value of any
24 nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an
25 employee's base hourly rate.

26 54. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
27 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
28 missed meal break, per day in a sum to be proven at trial.

1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **AGAINST DEFENDANT FOR FAILURE TO PROVIDE REST PERIODS PURSUANT**
5 **TO LABOR CODE § 226.7**

6 55. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 56. Labor Code § 226.7 and IWC Wage Order 7 require an employer to provide rest
9 periods or to pay an additional one (1) hour of wages for each rest period the employer fails to
10 provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or
11 major fraction thereof.

12 57. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 their rights associated with rest periods.

14 58. Defendant maintained a consistent policy of failing to provide Plaintiff and the
15 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or
16 major fraction thereof.

17 59. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
18 at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7.
19 *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must include the
20 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
21 paid at an employee's base hourly rate.

22 60. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
23 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
24 missed rest break, per day in a sum to be proven at trial.

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1 IX.

2 FOURTH CAUSE OF ACTION

3 PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

4 AGAINST DEFENDANT FOR VIOLATION OF LABOR CODE § 226(A)

5 61. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 62. California Labor Code § 226(a) requires employers to issue accurate itemized wage
8 statements that show the total hours worked by the employee and all applicable hourly rates in
9 effect during the pay period and the corresponding number of hours worked at each hourly rate by
10 the employee. (Labor Code §§ 226(a)(2) and (9).)

11 63. Defendant failed to issue accurate itemized wage statements that show the total
12 hours worked by the employee under Labor Code § 226(a)(2) and all applicable hourly rates in
13 effect during the pay period and the corresponding number of hours worked at each hourly rate by
14 the employee under Labor Code § 226(a)(9).

15 64. As a result of Defendant's failure to pay wages as described above, Defendant has
16 failed to accurately show total hours worked and all applicable hourly rates in effect during the
17 pay period and the corresponding number of hours worked at each hourly rate by the employee on
18 itemized wage statements issued to Plaintiff and the Proposed Class.

19 65. Defendant's failure to provide accurate itemized wages statements according to
20 Labor Code § 226(a) was all done on a regular and consistent basis.

21 66. An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
23 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
24 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
25 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
26 reasonable attorneys' fees.

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1 X.

2 FIFTH CAUSE OF ACTION

3 PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

4 AGAINST DEFENDANT FOR WAITING TIME PENALTIES

5 UNDER LABOR CODE § 203

6 67. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 68. Numerous members of the Proposed Class including the Plaintiff are no longer
9 employed by Defendant. They were either fired or quit Defendant's employ.

10 69. Defendant's failure to pay wages, as alleged above was willful in that Defendant
11 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
12 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
13 penalty until paid for a period of up to thirty (30) days from the time they were due.

14 70. Defendant has failed to pay Plaintiff and others a sum certain at the time of
15 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
16 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
17 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
18 members' daily wage multiplied by thirty (30) days.

19 XI.

20 SIXTH CAUSE OF ACTION

21 PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

22 AGAINST DEFENDANT FOR UNFAIR COMPETITION PURSUANT TO BUSINESS &

23 PROFESSIONS CODE § 17200

24 71. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 72. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
27 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
28 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
2 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
3 interest within the meaning of Code of Civil Procedure § 1021.5.

4 73. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
5 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
6 appropriate equitable relief.

7 74. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
8 practices.

9 75. California’s wage and hour laws express fundamental public policies. Providing
10 employees with proper wages and compensation are fundamental public policies of this State and
11 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
12 vigorously minimum labor standards, to ensure that employees are not required or permitted to
13 work under substandard and unlawful conditions, and to protect law-abiding employers and their
14 employees from competitors who lower their costs by failing to comply with minimum labor
15 standards.

16 76. Defendant has violated statutes and public policies as alleged herein. Through the
17 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
18 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
19 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
20 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
21 guaranteed to all employees under law.

22 77. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 78. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
25 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
26 § 17200, *et seq.* of the Business & Professions Code.

27 79. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
28 others similarly situated have been damaged in a sum as may be proven.

80. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Class the money Defendant has unlawfully failed to pay.

XII.

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

81. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

82. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

83. Plaintiff brings this representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by NRC ENVIRONMENTAL SERVICES INC., in the State of California who worked one or more pay periods since September 29, 2020 to the present. (“aggrieved employees”)

84. In addition to the wage, meal period, rest period, itemized wage statement, and penalty claims alleged in detail above, Plaintiff also alleges a record keeping violation as the basis for a PAGA claim on behalf of the aggrieved employees. Defendant did not maintain accurate records of meal periods for Plaintiff and the aggrieved employees.

85. For at least one (1) year prior to the date of the letter sent to the Labor Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated IWC Wage Order 4, ¶7 with respect to Plaintiff and all aggrieved

employees. Defendant required Plaintiff and the aggrieved employees to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) by violating, refusing, and neglecting to comply with the commission's orders regarding working conditions.

86. Wage Order 4-2001 states that "Every employer shall keep accurate information with respect to each employee including the following:...(3)...Meal periods, split shift intervals and total daily hours worked shall also be recorded....." Labor Code section 1199 penalize and bar employers from employing, requiring, or causing an employee to work under conditions of labor prohibited by a wage order, and from violating, refusing, or neglecting to comply with such an order.

87. Defendant violated IWC Wage Order 4-2001 by failing to maintain accurate records of meal periods for Plaintiff and other employees pursuant to Industrial Welfare Commission Wage Order 4-2001.

88. Defendant's violation of IWC Wage Order 4-2001 was all done on a regular and consistent basis.

89. As a result of the acts alleged above, Plaintiff, on behalf of himself and all other aggrieved employees, seeks penalties under Labor Code section 2699, et seq. because of Defendant's violation of IWC Wage Order 4-2001, for which a civil penalty applies under PAGA.

90. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant's violation of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 1194, 1199, and Wage Order 4-200, which call for civil penalties.

91. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

92. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

93. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the

1 LWDA² and mailed a letter by certified mail to each of the Defendant's entity address, as
2 proscribed by the Code on September 29, 2021, describing Defendants' conduct in violation of
3 Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and IWC Wage Order 4-2001.
4 (see Exhibit "1.") Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt
5 of the notice (see Exhibit "2").

6 94. As no letter evidencing the LWDA's intention to investigate was received by
7 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
8 action as though the LWDA had not chosen to investigate pursuant to Labor Code
9 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
10 Amended Class and Representative Action Complaint immediately.

11 **RELIEF REQUESTED**

12 **WHEREFORE**, Plaintiff prays for the following relief:

13 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
14 to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this
15 action to the present as may be proven;

16 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
17 members' hourly wage at the appropriate regular rate of compensation for each meal period that
18 Defendant failed to provide from at least four (4) years prior to the filing of this action to the
19 present as may be proven;

20 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
21 members' hourly wage at the appropriate regular rate of compensation for each rest period that
22 Defendant failed to provide from at least four (4) years prior to the filing of this action to the
23 present as may be proven;

24 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
25 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
26 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 an aggregate penalty of four thousand dollars (\$4,000);

2 5. For penalties pursuant to Labor Code § 203 for all employees who were terminated
3 or resigned equal to their daily wage times thirty (30) days;

4 6. An award of prejudgment and post judgment interest;

5 7. An order enjoining Defendant and its agents, servants, and employees, and all
6 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
7 overtime, meal and rest periods, accurate itemized wage statements, reimbursement of expenses,
8 and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7,
9 510, 512, 1194, 1199, and IWC 4-2001;

10 8. For restitution for unfair competition pursuant to Business & Professions Code
11 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

12 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
13 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and Wage Order 4-2001;

14 10. An award providing for payment of costs of suit;

15 11. An award of attorneys' fees; and

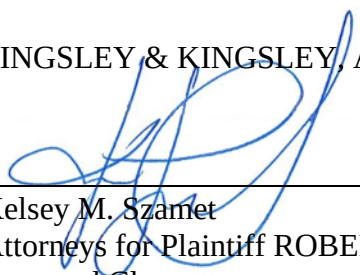
16 12. Such other and further relief as this Court may deem proper and just.

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

20
21 DATED: December 7, 2021

KINGSLEY & KINGSLEY, APC

22
23 By: 

24 Kelsey M. Szamet
25 Attorneys for Plaintiff ROBERT DELL and the
26 Proposed Class
27
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