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

12 SANTIAGO MELGAR; on behalf of himself and
13 all others similarly situated;

14 Plaintiff,

15 vs.

16 PRO-TEK MANUFACTURING, INC., and
17 DOES 1 through 20, inclusive;

18 Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
11/23/2021

Chad Finke, Executive Officer / Clerk of the Court
By: Andrel Gospel Deputy

CASE NO.:21CV002665

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) FAILURE TO PROVIDE COMPLIANT MEAL PERIODS;
- (4) FAILURE TO PROVIDE COMPLIANT REST;
- (5) WAITING TIME PENALTIES;
- (6) FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff SANTIAGO MELGAR, an individual, (hereinafter “Plaintiff”), on behalf of
2 himself and all others similarly situated (hereinafter “Class Members”), complain and allege as
3 follows:

4 **I. INTRODUCTION**

5 1. This is a Class Action pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiff and all other current and former similarly situated employees employed by
7 defendant PRO-TEK MANUFACTURING, INC. (“Defendant”) and DOES 1 to 20, inclusive,
8 (collectively “Defendants”), within the State of California during the relevant statutory period.

9 2. This is also a Representative Action under the California Private Attorneys General
10 Act of 2004 (“PAGA”) and California Labor Code § 2698, *et seq.*, on behalf of all individuals who
11 are or were employed by Defendants as non-exempt hourly workers within the State of California
12 from November 15, 2020, and continuing into the present.

13 3. From at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have consistently failed to pay minimum and overtime wages for all hours
15 worked, failed to provide compliant meal and rest periods, failed to pay missed meal and rest period
16 premiums, failed to issue accurate/complete wage statements, and failed to pay all wages due upon
17 separation from employment.

18 4. Plaintiff on behalf of himself, the State of California, and all aggrieved employees,
19 pursuant to Labor Code §2699, also seeks penalties for each and every pay period from November
20 15, 2020 through the date of the trial, in which Defendants violated the provisions of the California
21 Labor Code referenced herein as well as IWC Wage Order 1-2001.

22 **II. JURISDICTION AND VENUE**

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

6. This Court has personal jurisdiction over Defendants because they have caused injuries in Alameda County 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 sections 17200, *et seq.* Defendants also transact business throughout California and have obtained the benefits of the laws of the State of California and are therefore subject to the personal jurisdiction of this Court.

7. Venue as to each defendant is proper in this Court pursuant to Code of Civil Procedure § 395(a). Defendant Pro-Tek Manufacturing, Inc. operates within California and does business within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Class Members within the State of California and Alameda County.

8. This case should be classified as complex according to California Rules of Court, Rule 3.400 and assigned to a complex litigation judge and department as it is a class action, 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.

III. PARTIES

9. Plaintiff is a resident of the State of California and was employed by Defendant Pro-Tek Manufacturing, Inc. beginning in approximately 2014, at Defendant's Livermore, California location.

10. Plaintiff seeks to represent a class composed and defined as “*all hourly non-exempt individuals who are or were employed by Defendants at any of their facilities in California from four years prior to the filing of this Complaint through the date of trial*” (the “Class Period”).

11. Plaintiff also represent the State of California as well as the following group of aggrieved employees: *all individuals who are or were employed by Defendants in any of their facilities in California from November 15, 2020 and continuing to the present* (“Aggrieved Employees”).

12. Plaintiff is informed and believe and thereon alleges that Defendant Pro-Tek Manufacturing, Inc. is a California corporation authorized to do business and doing business in

1 Alameda County and throughout California and is and/or was the legal employer of Plaintiff and
2 the Class Members during the applicable statutory periods.

3 13. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
4 participation in the conduct herein alleged, of defendants sued herein as DOES 1 through 20,
5 inclusive, but on information and belief allege that those defendants are legally responsible for the
6 payment of wages and penalties and damages to Plaintiff and all Class Members by virtue of
7 defendants' unlawful actions and practices and therefore sues these defendants by such fictitious
8 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
9 defendants when ascertained.

10 14. Plaintiff also alleges that he and the Class Members worked under the joint direction
11 and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to
12 this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy
13 in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other
14 defendants. On information and belief, a unity of interest and ownership between each defendant
15 exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated
16 employees.

17 15. Furthermore, on information and belief, Defendants are an integrated enterprise and
18 should be treated as a single employer because Defendants share an interrelation of operations, with
19 common human resources and personnel policies and shared common offices and facilities. Upon
20 information and belief, Defendants share common management, a centralized control of labor
21 operations, and common ownership or financial control.

22 16. Also, Plaintiff is informed and believe and thereon allege that the defendants sued
23 herein as DOES 1-20 are now and at all material times herein mentioned were the owner/owners of
24 certain other defendants and the actual employer of Plaintiff and the Class Members or, in the
25 alternative, were individuals employed by Defendant Pro-Tek Manufacturing as a managerial
26 and/or supervisory employees and/or agents.

27 17. In addition, Plaintiff alleges that at all relevant times herein the defendants sued
28 herein as DOES 1-20 had the authority, in the interest of certain other defendants, to exercise

1 independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar
2 actions against Plaintiff, and were in Plaintiff's chain of command at the time of and direct
3 participants in the wrongful conduct which constitutes the basis of Plaintiff's complaint herein.
4 Plaintiff also allege that the defendants sued herein as DOES 1-20 and certain other defendants are
5 the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were,
6 at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s)
7 and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting
8 themselves in the manner described herein, the defendants sued herein as DOES 1-20 and certain
9 other defendants were acting in active concert with one another such that the acts of each were fully
10 attributable to the others in all material respects. Plaintiff also allege that certain other defendants
11 were merely the alter ego of the defendants sued herein as DOES 1-20 in that there existed a unity
12 of interest and ownership such that any separateness between them ceased to exist and the
13 defendants sued herein as DOES 1-20 exercised undue dominance, control, influence, and
14 management over certain other defendants. Plaintiff further allege that, at all relevant times, certain
15 other defendants have been inadequately capitalized to conduct business, have failed to follow
16 appropriate corporate formalities, and have simply been a shell and instrumentality through which
17 the defendants sued herein as DOES 1-20 have conducted their personal affairs. Accordingly, the
18 corporate veil should be pierced, and any liability attached to certain other defendants should be
19 imposed jointly and severally against the defendants sued herein as DOES 1-20. Adherence to the
20 fiction of the separate existence of these corporate entities would permit abuse of the corporate
21 privilege, thereby sanctioning fraud and promoting injustice.

22 **IV. SUMMARY OF FACTS**

23 18. Throughout the Class Period, Plaintiff and the Class Members were not paid at least
24 minimum wages for all of their hours worked.

25 19. Labor Code § 1197 states the California requirement that employees must be paid at
26 least the minimum wage fixed by the Commission, and any payment of less than the minimum
27 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal
28 minimum wage ... to recover in a civil action the unpaid balance of the full amount of this

1 minimum wage.” IWC Wage Order No. 1-2001, § 4 also obligates employers to pay each employee
2 minimum wages for all hours worked.

3 20. These minimum wage standards apply to each hour employees worked for which
4 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
5 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
6 or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005)
7 135 Cal.App.4th 314, 324.

8 21. Plaintiff and the Class Members were not paid at least minimum wages for all of
9 their hours worked due to Defendants’ illegal rounding policies. Because all of Defendants’
10 employees are required to start working at the same time, Defendants directed their employees to
11 clock in prior to their scheduled start time to avoid creating a bottleneck at the punch machine(s).
12 Despite being subject to Defendants’ control, the employees were not compensated for the time
13 during which they were clocked-in prior to the official start of their shifts. This policy and practice
14 routinely under-compensated Plaintiff and Class Members and resulted in a net benefit to
15 Defendants. In other words, Defendants’ rounding policies are not neutral and result in systematic
16 under compensation. As a result, Plaintiff and the Class Members were not fully compensated for
17 all hours worked for Defendants.

18 22. Accordingly, Defendants have and continue to violate Labor Code sections 1194,
19 1194.2, 1197, and 1197.1.

20 23. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
21 damages for violations of Labor Code § 1194. Where an employee, such as Plaintiff and the Class
22 Members, are not paid for all hours worked under Labor Code § 1194, the employee may recover
23 minimum wages for the time associated with the time for which they received no compensation.
24 See *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that
25 employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if
26 they also showed they were paid less than minimum wage]; accord *Andrade v. Arby’s Rest. Grp.,*
27 *Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at *20-21. Since Defendants failed
28 to provide Plaintiff and the Class Members with compensation for all hours worked, each are

1 entitled to recover liquidated damages under Labor Code § 1194.2.

2 24. Labor Code § 1197.1 authorizes employees who are paid a wage less than the
3 minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty,
4 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
5 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same
7 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
8 for which the employee is underpaid regardless of whether the initial violation is intentionally
9 committed. As set forth above, Defendants failed to compensate Plaintiff and the Class Members
10 for all wages for all hours worked. Accordingly, and to the extent permitted by law, Plaintiff and
11 the Class Members are entitled to recover liquidated damages for violations of Labor Code §
12 1197.1.

13 25. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
14 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code §
16 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of
17 more than 5 hours per day without providing the employee with an uninterrupted meal period of not
18 less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more
19 than 10 hours per day without providing the employee with a second meal period of not less than 30
20 minutes.” Furthermore, Labor Code 512(b) requires employers to provide uninterrupted meal
21 periods to employees prior to the commencement of the employees’ sixth hour of work. *Brinker*
22 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041.

23 26. Notably, Defendants did not timely relieve Plaintiff and the Class Members of all of
24 their duties for full, uninterrupted 30-minute meal periods prior to the commencement of the sixth
25 hour of their work.

26 27. Additionally, Plaintiff and the Class Members often worked shifts in excess of 10
27 hours, yet Defendants did not provide Plaintiff and the Class Members with a second meal period
28 during such times.

1 28. Further, pursuant to Labor Code 226.7(c), if an employer failed to provide an
2 employee with a meal or rest period, “the employer shall pay the employee one additional hour of
3 pay at the employee’s regular rate of compensation for each workday that the meal or rest or
4 recovery period is not provided.”

5 29. Plaintiff and the Class Members were not provided meal period premiums when they
6 were not provided timely compliant duty-free 30-minute meal periods. Accordingly, Plaintiff and
7 the Class Members were regularly denied their meal periods in violation of Labor Code 226.7, 512,
8 and the applicable IWC Wage Order.

9 30. Section 12 of IWC Wage Order No. 1-2001 states in pertinent part: “Every employer
10 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
11 the middle of each work period. The authorized rest period time shall be based on the total hours
12 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
13 thereof.”

14 31. Here, Defendants failed to provide Plaintiff and the Class Members with duty-free
15 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
16 Since Defendants did not offer Plaintiff and the Class Members the opportunity to receive a
17 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to
18 skip...breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f
19 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
20 employees voluntarily chose to skip those breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue
21 of waiver ever arises for a rest break that was required by law but never authorized; if a break is not
22 authorized, an employee has no opportunity to decline to take it.”).

23 32. Additionally, Defendants failed to provide their employees with a compliant third
24 rest periods during shifts in which those employees worked in excess of ten (10) hours. This is not
25 in accord with California law, as it does not provide or authorize a rest period for every four (4)
26 hours worked or major fraction thereof, as required by California law.

27 33. In addition to failing to authorize and permit compliant rest periods, Plaintiff and the
28 Class Members were not compensated with one (1) hours’ worth of pay at their regular rate of

1 compensation when they were not provided with a compliant rest period in accordance with Labor
2 Code § 226.7(b).

3 34. Plaintiff and the Class Members were not provided rest break premiums for their
4 missed rest breaks. Accordingly, Plaintiff and the Class Members were also regularly denied their
5 rest breaks in violation of Labor Code 226.7, 512, and IWC Wage Order No. 1-2001.

6 35. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
8 Labor Code § 202(a) states in pertinent part: “If an employee not having a written contract for a
9 definite period quits his or her employment, his or her wages shall become due and payable not
10 later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her
11 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”
12 Labor Code § 203(a) states, “If an employer willfully fails to pay, without abatement or reduction,
13 in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee
14 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
15 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
16 not continue for more than 30 days.”

17 36. Here, Defendants failed to pay Plaintiff and the Class Members all wages that were
18 due and owing (including all minimum and overtime wages owed, meal and rest period premiums,
19 etc.) within the required time following the end of their employment in accordance with Labor
20 Code §§ 201-202. As a result, Plaintiff and all such Class Members are entitled to 30 days of
21 wages as a “waiting time penalty.”

22 37. Labor Code § 226(a) requires an employer to provide its employees with itemized
23 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the employee,
24 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
25 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
27 of the period for which the employee is paid, (7) the name of the employee and only the last four
28 digits of his or her social security number or an employee identification number other than a social

1 security number, (8) the name and address of the legal entity that is the employer, and (9) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.

4 38. Here, based on Defendants' failure to pay Plaintiff and the Class Members for all
5 hours worked, and pay meal and rest period premiums for noncompliant meal and rest periods,
6 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
7 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
8 each hourly rate by their employees, in violation of Labor Code Section 226(a)(1), (2), (5) and (9).
9 Thus, Defendants have violated Labor Code section 226(a)(1), (2), (5) and (9) with respect to
10 Plaintiff and the Class Members.

11 39. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Thus, for
16 the violations of Labor Code section 226 described above, Plaintiff and the Class Members may
17 also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a).

18 40. In addition to violating Labor Code § 226(a), Defendants also knowingly and
19 intentionally failed to provide Plaintiff and the Class Members with accurate itemized wage
20 statements in violation of Labor Code § 226(e). Defendants undeniably knew that they were not
21 providing Plaintiff and the other Class Members with wage statements required by California law.

22 41. Plaintiff fully and completely exhausted their administrative remedies under PAGA
23 prior to proceeding with this action. On or about November 15, 2021, Plaintiff filed their PAGA
24 Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by
25 certified mail to Defendant Pro-Tek Manufacturing, Inc. setting forth the facts and theories of the
26 violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by
27 PAGA, Plaintiff electronically submitted the \$75.00 filing fee with the LWDA. Therefore, once
28 more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the

1 administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to
2 include the PAGA allegations enumerated below. Once this occurs, Plaintiff seek to recover all
3 applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees,
4 costs, and/or other damages as permitted by PAGA through a representative action pursuant to the
5 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.
6 Plaintiff are not required to, nor do they, seek class certification of the PAGA claims under Code of
7 Civil Procedure § 382.

8 **V. CLASS ACTION ALLEGATIONS**

9 42. Plaintiff brings this action on behalf of themselves and all others similarly situated as
10 a class action pursuant to Code of Civil Procedure § 382.

11 43. Plaintiff seeks to represent the following class and subclasses:

12 **The Class:** *all hourly non-exempt individuals who are or were employed by*
13 *Defendants in any of their facilities in California from four years prior to the*
filing of this complaint through the date of trial.

14 **The Meal Period Subclass:** *all hourly non-exempt individuals who are or were*
15 *employed by Defendants in any of their facilities in California who worked at*
16 *least one shift greater than five hours, from four years prior to the filing of this*
complaint through the date of trial.

17 **The Rest Break Subclass:** *all hourly non-exempt individuals who are or were*
18 *employed by Defendants in any of their facilities in California who worked at*
19 *least one shift greater than 3.5 hours, from four years prior to the filing of this*
complaint through the date of trial.

20 **The Waiting Time Penalty Subclass:** *all hourly non-exempt individuals who*
21 *were employed by Defendants in any of their facilities in California whose*
22 *employment with Defendants ended from three years prior to the filing of this*
complaint through the date of trial.

23 **The Wage Statement Subclass:** *all hourly non-exempt individuals who are or*
24 *were employed by Defendants in any of their facilities in California who received*
25 *at least one wage statement from Defendants from one year prior to the filing of*
this complaint through the date of trial.

26 44. Plaintiff reserves the right to amend or modify the class and subclass descriptions
27 with greater specificity or further division into subclasses or limitation to particular issues as
28 appropriate.

1 45. Plaintiff, as class representative, is a member of the class and subclasses that he
2 seek to represent.

3 46. This action has been brought and may properly be maintained as a class action under
4 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
6 records.

7 47. **Numerosity:** The potential members of the class as defined are so numerous that a
8 joinder of all Class Members is impracticable. Although the exact number is currently unknown to
9 Plaintiff, this information is easily ascertainable from Defendants' personnel and payroll records.

10 48. **Commonality:** There are questions of law and fact common to the class which
11 predominate over any questions affecting only individual members of the class, including without
12 limitation:

13 i. Whether Defendants violated the California Labor Code and the applicable IWC
14 Wage Order by failing to pay minimum and overtime wages to Plaintiff and the Class Members for
15 all hours worked;

16 ii. Whether Defendants violated the California Labor Code and applicable IWC Wage
17 Order by failing to provide compliant meal periods to Plaintiff and the Meal Period Subclass
18 Members, and whether Defendants failed to compensate Plaintiff and the Meal Period Subclass
19 Members with one additional hour of premium pay for each instance when a compliant meal period
20 was not provided;

21 iii. Whether Defendants violated the California Labor Code and applicable IWC Wage
22 Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break Subclass Members,
23 and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass Members with
24 one additional hour of premium pay for each instance when a compliant rest break was not
25 provided;

26 iv. Whether Defendants violated the California Labor Code by failing to pay all wages
27 due upon separation of employment between Defendants and Plaintiff and the Waiting Time
28 Penalties Subclass Members, whether such separation was voluntary or involuntary;

1 v. Whether Defendants violated Labor Code section 226(a) by not furnishing Plaintiff
2 and the Wage Statement Subclass Members with accurate and/or complete wage statements;

3 vi. Whether Defendants violated California Business & Professions Code §§ 17200 *et*
4 *seq.* by their unlawful practices as alleged herein; and

5 vii. Whether Defendants violated § 17200 *et seq.* of the California Business and
6 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 226, 226.7, 510,
7 512, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and any
8 applicable IWC Wage Orders, which violations constitute false, fraudulent, unlawful, unfair and
9 deceptive business practices;

10 49. **Typicality:** Plaintiff's claims, as class representatives, are typical of the claims of
11 the class and the subclasses. Plaintiff, like other Class Members, were subjected to Defendants'
12 ongoing Labor Code and Wage Order violations including their failure to pay minimum wages,
13 failure to pay overtime wages, failure to provide compliant meal periods, failure to provide
14 compliant rest periods, failure to timely pay final wages, and failure to provide accurate itemized
15 wage statements.

16 50. **Adequacy of Representation:** Plaintiff, as the class representatives, will fairly and
17 adequately represent and protect the interests of the class. Plaintiff's interests are not in conflict with
18 those of the class. Plaintiff's counsel are competent and experienced in litigating large employment
19 class actions and other complex litigation matters, including cases like this case.

20 51. **Superiority of Class Action:** Class certification is appropriate because a class
21 action is superior to other available means for the fair and efficient adjudication of this controversy.
22 Individual joinder of all Class Members is not practicable, and questions of law and fact common to
23 the class predominate over any questions affecting only individual members of the class. Each
24 Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal
25 policies and practices set forth above. Class action treatment will allow those similarly situated
26 persons to litigate their claims in the manner that is most efficient and economical for the parties
27 and the judicial system.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code § 1194, 1194.2, 1197; IWC Wage Order No. 1-2001)

4 *Plaintiff and Class Members Against All Defendants*

5 52. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
6 the preceding paragraphs.

7 53. Plaintiff and Class Members are and/or were not exempt from the requirement to be
8 paid at least the applicable California minimum wage throughout the statutory period for each hour
9 worked.

10 54. At all relevant times, Plaintiff and the Class Members were not paid at least
11 minimum wages for all of their hours worked due to, among other practices, Defendants' practice
12 of requiring Plaintiff and the Class Members to perform work-related tasks, including but not
13 limited to changing into their mandated work apparel prior to clocking in and after clocking out.
14 Despite being subject to Defendants' control while performing said tasks, Defendants did not
15 provide any compensation for the time it took to complete these processes. As a result, Plaintiff
16 and the Class Members were not fully compensated for all minimum wages owed for all hours
17 worked.

18 55. As a result of Defendants' practices described above, Plaintiff and the Class
19 Members were required to perform off-the-clock work that Defendants either knew or should have
20 known they were performing.

21 56. Additionally, at all times mentioned, Defendants unevenly rounded the time worked
22 by Plaintiff and the Class Members, resulting in Plaintiff and the Class Members not being fully
23 compensated for all minimum wages owed for all hours worked.

24 57. Consequently, Defendants violated California Labor Code laws and minimum wage
25 laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197 and IWC Wage Order No. 1-2001, § 4.

26 58. Plaintiff are informed and believe and thereon allege that Defendants intentionally,
27 willfully, and improperly failed to pay wages to Plaintiff and the Class Members.
28

59. Defendants' conduct was willful, as Defendants knew that Plaintiff and Class Members were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

60. At all material times, defendants DOES 1 through 20 were and/or are the employers of Plaintiff, the Class Members, or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558.

61. As a result of Defendants' wrongful conduct, Plaintiff and the Class Members have been damaged in amounts to be proven at trial.

62. Plaintiff, on behalf of themselves and the Class Members seek recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194, 1194.2 and 1197, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Labor Code § 510, 1194; IWC Wage Order No. 1-2001)

Plaintiff and the Overtime Subclass Members Against All Defendants

63. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

64. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

65. Pursuant to Section 3 of IWC Wage Order No. 1-2001, employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

66. At all times mentioned, Defendants unevenly rounded the time worked by Plaintiff and the Overtime Subclass Members, resulting in Plaintiff and the Overtime Subclass Members being paid less than one and one-half times their regular rate of pay for their overtime hours

1 worked.

2 67. Accordingly, by requiring Plaintiff and the Overtime Subclass Members to work in
3 excess of eight (8) hours per day and/or forty (40) hours per week and without properly
4 compensating overtime wages for all overtime hours worked, as described above, Defendants
5 willfully violated the provisions of Labor Code section 1194.

6 68. As a result of the unlawful acts of Defendants, Plaintiff and the Overtime Subclass
7 Members have been deprived of overtime wages in amounts to be determined at trial, and are
8 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
9 pursuant to Labor Code sections 1194 and 1199; Code of Civil Procedure section 1021.5; and Civil
10 Code section 3287.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS**

13 (Labor Code § 226.7 and 512; IWC Wage Order No. 1-2001)

14 *Plaintiff and the Meal Period Subclass Against All Defendants*

15 69. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
16 the preceding paragraphs.

17 70. Plaintiff and the Meal Period Subclass Members are and/or were "non-exempt"
18 employees of Defendants who did not receive proper protections and benefits of the laws governing
19 mandatory meal periods.

20 71. Labor Code § 512(a), in part, provides that employers, including Defendants, may
21 not employ an employee for a work period of more than five hours per day without providing an
22 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
23 that if the total work period per day of the employee is no more than six hours, the meal period may
24 be waived by mutual consent of both the employer and the employee. Employers may not employ
25 an employee for a work period more than 10 hours per day without providing the employee with a
26 second meal period of not less than 30 minutes. Furthermore, Labor Code 512(b) requires
27 employers to provide uninterrupted meal periods to employees prior to the commencement of the
28 employees' sixth hour of work.

1 72. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order, Defendants
2 shall pay an employee one additional hour of pay at the employee's regular rate of compensation
3 for each meal period that is missed.

4 73. At all relevant times herein, Plaintiff and the Meal Period Subclass Members were
5 denied the timely 30-minute off-duty meal periods to which they were entitled. Specifically,
6 Defendants did not timely relieve Plaintiff and the Meal Period Subclass Members of all of their
7 duties for full, uninterrupted 30-minute meal periods prior to the commencement of the sixth hour
8 of their work.

9 74. Additionally, at all relevant times, Plaintiff and the Meal Period Subclass Members
10 often worked shifts in excess of ten (10) hours, yet Defendants did not provide Plaintiff and the
11 Class Members with a second meal period during such times.

12 75. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
13 every pay period with respect to Plaintiff and the Meal Period Subclass Members because Plaintiff
14 and the Meal Period Subclass Members were not provided with all mandatory meal periods and
15 Defendants failed to pay Plaintiff and the Meal Period Subclass Members one additional hour of
16 compensation in lieu thereof.

17 76. On information and belief, Plaintiff and the Meal Period Subclass Members did not
18 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
19 obtained from Plaintiff and the Meal Period Subclass Members were not willfully obtained, were
20 not voluntarily agreed to, were a condition of employment, or were a part of a contract of unlawful
21 adhesion. Defendants did not permit or authorize Plaintiff and the Meal Period Subclass Members
22 to take meal periods in accordance with California law.

23 77. By their failure to provide Plaintiff and the Meal Period Subclass Members with
24 meal periods as required by California law and failing to pay one hour of additional wages in lieu of
25 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the
26 applicable IWC Wage Order. Accordingly, Defendants are liable for one hour of additional wages
27 at the employee's regular rate of compensation for each workday that a meal period and/or paid rest
28 break was not lawfully provided in an amount to be proven at time of trial.

78. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, Defendants, and each DOE, are liable to Plaintiff and the Meal Period Subclass Members for unpaid wage premiums, penalties, costs, and interest.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code § 226.7; IWC Wage Order No. 1-2001)

Plaintiff and the Rest Break Subclass Against All Defendants

79. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

80. Plaintiff and the Rest Break Subclass Members are and/or were “non-exempt” employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

81. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to their non-exempt employees as mandated by Order of the Industrial Welfare Commission.

82. Section 12 of IWC Wage Order No. 1-2001 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

83. Furthermore, in an eight-hour (8) shift, rest breaks should fall on either side of the meal break, absent factors rendering such scheduling impossible.

84. Pursuant to Labor Code § 226.7(b) and the above-referenced sections of the applicable Wage Order, Defendants shall pay Plaintiff and the Rest Break Subclass Members one (1) additional hour of pay at their regular rate of compensation for each day that a compliant rest period is not provided.

85. At all relevant times, Plaintiff and the Rest Break Subclass Members were not provided with ten (10) minutes of net rest break time for every four (4) hours worked, or major fraction thereof, as mandated by California law. Moreover, Plaintiff and the Rest Break Subclass

1 Members were not provided rest break premiums for their missed rest breaks.

2 86. Additionally, at all relevant times mentioned herein, Plaintiff and the Rest Break
3 Subclass Members often worked in excess of ten (10) hours in a shift, yet Defendants failed to
4 authorize and/or permit a third mandated rest break. Accordingly, Plaintiff and the Rest Break
5 Subclass Members were regularly denied their rest breaks in violation of Labor Code 226.7, 512, as
6 well as IWC Wage Order No. 1-2001. As a result, Plaintiff and the Rest Break Subclass Members
7 were not provided net rest periods of at least then (10) minutes for each four (4)-hour work period,
8 or major fraction thereof.

9 87. Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage Order
10 every pay period with respect to Plaintiff and the Rest Break Subclass Members because Plaintiff
11 and the Rest Break Subclass Members were not provided with all mandatory rest periods and
12 Defendants failed to pay Plaintiff and the Rest Break Subclass Members one (1) additional hour of
13 compensation in lieu thereof.

14 88. By their failure to provide Plaintiff and the Rest Break Subclass Members with rest
15 breaks as required by California law, and failing to pay one (1) hour of additional wages in lieu of
16 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the
17 above-referenced IWC Wage Order. Accordingly, Defendants are liable for one (1) hour of
18 additional wages at the employee's regular rate of compensation for each workday that a meal
19 period and/or paid rest break was not lawfully provided in an amount to be proven at time of trial.

20 89. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
21 applicable IWC Wage Order, Defendants are liable to Plaintiff and the Rest Break Subclass
22 Members for unpaid wage premiums, penalties, costs, and interest.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY FINAL WAGES**

25 (Labor Code § 201 – 203)

26 *Plaintiff and the Waiting Time Penalty Subclass Against All Defendants*

27 90. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
28 the preceding paragraphs.

91. The actionable period for this cause of action is three (3) years prior to the filing of this complaint through the present, and on-going until the violations are corrected, or the class is certified.

92. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Penalty Subclass Members during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

93. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

94. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Subclass Members for all minimum and overtime wages owed, as well as meal period premiums and rest period premiums prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

95. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Subclass Members for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties.)

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226(a))

Plaintiff and the Wage Statement Subclass Against All Defendants

96. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

97. Labor Code sections 226(a)(1), (2), (5) and (9) require employers semimonthly or at the time of each payment of wages, to furnish each of his or her employees, an accurate itemized

1 statement in writing showing the gross wages earned, the total hours worked, the net wages earned,
2 as well as the applicable hourly rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate by the employee.

4 98. From at least one (1) year prior to the filing of this Complaint through the present,
5 Defendants knowingly and intentionally failed to issue accurate and complete itemized wage
6 statements in writing to Plaintiff and the Wage Statement Subclass Members that accurately
7 indicated the gross wages earned, the total hours worked, the net wages earned, as well as the
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by Plaintiff and the Wage Statement Subclass Members.

10 99. Due to Defendants' failure to pay Plaintiff and the Wage Statement Subclass
11 Members all minimum and overtime wages owed as well as meal and rest period premiums for
12 noncompliant meal and rest periods, the wage statements issued by Defendants did not indicate the
13 correct amount of gross wages earned, total hours worked, net wages earned, or the correct
14 corresponding number of hours worked at each hourly rate in violation of Labor Code section
15 226(a)(1), (2), (5) and (9).

16 100. Defendants have therefore knowingly and intentionally failed to comply with Labor
17 Code section 226(a). IWC Wage Order No. 1-2001 requires Defendants to maintain accurate
18 records showing the total wages paid each payroll period, the total hours worked in the payroll
19 period and applicable rates of pay. Defendants failed to keep accurate records of the total wages
20 paid, the total hours worked, or the applicable rates of pay.

21 101. An employee suffering injury as a result of a knowing and intentional failure by an
22 employer to comply with Labor Code section 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.

27 102. The absence of accurate information on their wage statements has delayed timely
28 challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations

1 to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct
2 time and pay records, and led to submission of inaccurate information about wages and amounts
3 deducted from wages to state and federal governmental agencies.

4 103. Accordingly, Plaintiff and the Wage Statement Subclass Members are entitled to
5 damages according to proof.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR AND UNLAWFUL COMPETITION**

8 (Business and Professions Code § 17200 *et seq.*)

9 *Plaintiff and All Classes Against All Defendants*

10 104. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
11 the preceding paragraphs.

12 105. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
13 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
14 Class Members, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the
15 unfair and unlawful business practices of Defendants as alleged herein.

16 106. Defendants are “persons” as defined under Business & Professions Code § 17021.

17 107. As alleged herein, Defendants engaged in conduct that violated California’s wage
18 and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to
19 provide mandated meal periods and rest breaks, and failure to timely pay final wages all in order to
20 decrease their costs and increase their profits.

21 108. At all times relevant herein, Defendants did not pay Plaintiff and the Class Members
22 wages and monies and other financial obligations to which they were entitled.

23 109. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders,
24 Class Members, including Plaintiff, suffered a loss of wages and monies, all in an amount to be
25 shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and
26 laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

27 110. Defendants’ violations of the California Labor Code and IWC Wage Orders and
28 their scheme to lower their payroll costs as alleged herein, constitute unlawful and unfair business

1 practices because it was done in a systematic manner over a period of time to the detriment of the
2 Plaintiff and all others similarly situated.

3 111. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 unlawful, and harmful to Plaintiff, Class Members, and to the public. Plaintiff seeks to enforce
5 important rights affecting the public interest within the meaning of Code of Civil Procedure §
6 1021.5.

7 112. A violation of California Business & Professions Code § 17200, *et seq.* may be
8 predicated on the violation of any state or federal law. All the acts described herein as violations of,
9 among other things, the California Labor Code and IWC Wage Orders, are unlawful and in
10 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
11 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
12 violation of California Business and Professions Code §§ 17200, *et seq.*

13 113. Plaintiff, individually, and on behalf of the Class Members, are further entitled to
14 and do seek a declaration that the above-described business practices are unfair, unlawful and/or
15 fraudulent, and injunctive relief restraining Defendants from engaging in any of the above-
16 described unfair, unlawful and/or fraudulent business practices in the future.

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

23 **EIGHT CAUSE OF ACTION**

24 **FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.* FOR VIOLATIONS**
25 **OF LABOR CODE as well as IWC Wage Order 1-2001**

26 *Plaintiff and All Aggrieved Employees Against All Defendants*

27 115. Plaintiff, on behalf of themselves and all Aggrieved Employees, re-alleges and
28 incorporate by reference each and every allegation set forth in the preceding paragraphs.

1 116. Based on the above allegations incorporated by reference, Defendants violated Labor
2 Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 1194, 1194.2, 1197, 1198, 2802, as well as IWC
3 Wage Order 1-2001.

4 117. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
5 all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
6 subject to the following formula:

- 7 • \$100 for the initial violation per employee per pay period; and
- 8 • \$200 for each subsequent violation per employee per pay period.

9 These penalties will be allocated 75% to the LWDA and 25% to the affected employees.

10 118. In addition, and as set forth above, Defendants failed to provide Plaintiff and the
11 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code §
12 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section
13 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

17 119. Further, Plaintiff, as the Aggrieved Employees, need not demonstrate or prove that
18 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
19 intentional, or willful.

20 120. As a result of the acts alleged above, Plaintiff and the Aggrieved Employees seek
21 penalties under Labor Code § 2699, *et seq.* because of Defendants’ violations of Labor Code §§ 226
22 and 226.3.

23 121. Pursuant to Labor Code § 2699.3(a), on or about November 15, 2021, Plaintiff gave
24 written notice by certified mail to Defendant Pro-Tek Manufacturing, Inc., and to the LWDA of
25 their claims, including the facts and theories supporting all claims outlined in this Class and PAGA
26 Action Complaint. Therefore, once more than sixty-five (65) days have passed since that date,
27 Plaintiff will have fully satisfied the administrative prerequisites to suit under PAGA and this
28 complaint will be deemed amended to include the PAGA allegations enumerated below. Once this

1 occurs, Plaintiff seek to recover all applicable and available PAGA remedies pursuant to Labor
2 Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through
3 a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior*
4 *Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor do they seek class certification of the
5 PAGA claims under Code of Civil Procedure § 382.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, on behalf of himself and the Class Members, prays for judgment
8 against Defendant Pro-Tek Manufacturing, Inc. and each DOE defendant sued herein as DOES 1
9 through 20, inclusive, as follows:

10 1. An Order that this action may proceed and be maintained as a class action;

11 2. On the First Cause of Action:

12 a. A declaratory judgment that Defendants have violated sections 1194, 1194.2,
13 and 1197 of the California Labor Code by failing to pay Plaintiff and other Class Members for all of
14 their hours worked during the class period;

15 b. An award to Plaintiff and the Class Members in the amount of their unpaid
16 wages owed to them;

17 c. An award to Plaintiff and the Class Members for liquidated damages
18 thereto; and

19 d. An award to Plaintiff and the Class Members of their attorneys' fees and
20 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
21 California Labor Code and section 1021.5 of the California Code of Civil Procedure.

22 3. On the Second Cause of Action:

23 a. A declaratory judgment that Defendants have violated Labor Code sections
24 510, 1194, 1194.2, 1198, 1199 and Section 3 of IWC Wage Order No. 1-2001;

25 b. Pursuant to Labor Code section 510, an award to Plaintiff and the Overtime
26 Subclass Members, for the difference of the proper amount of overtime compensation paid to them
27 in the period from four years prior to the filing of this Complaint; and

28 c. An award of prejudgment interest, attorneys' fees and costs allowed by law;

1 4. On the Third Cause of Action:

2 a. A declaratory judgment that Defendants have violated California Labor Code
3 §§ 512, 226.7 and Section 11 of IWC Wage Order No. 1-2001; and

4 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Meal
5 Period Subclass Members for an hour of pay for each day that a Labor Code compliant meal period
6 was not provided in California during the Class Period.

7 5. On the Fourth Cause of Action:

8 a. A declaratory judgment that Defendants have violated California Labor Code
9 § 226.7 and Section 12 of IWC Wage Order No. 1-2001; and

10 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Rest
11 Break Subclass Members for an hour of pay for each day that a Labor Code compliant rest period
12 was not provided in California during the Class Period.

13 6. On the Fifth Cause of Action:

14 a. A declaratory judgment that Defendants have violated California Labor Code
15 §§ 201 through 203; and

16 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
17 the Waiting Time Penalty Subclass Members for waiting time penalties in the amount of 30 days
18 wages per Class Member who is no longer employed by Defendants.

19 7. On the Sixth Cause of Action:

20 a. A declaratory judgment that Defendants have violated Labor Code section
21 226, by issuing inaccurate and/or incomplete wage statements that failed to include the gross wages
22 earned, the total hours worked, the net wages earned and all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each applicable hourly rate to
24 Plaintiff and the Wage Statement Subclass Members; and

25 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
26 initial pay period in which a violation of Labor Code section 226 occurred and \$100 for each
27 subsequent pay period in which a violation of Labor Code section 226 occurred, not to exceed
28 \$4,000 for each Class Member, as well as an award of costs and reasonable attorney's fees,

1 pursuant to Labor Code section 226(e).

2 9. On the Seventh Cause of Action:

3 a. That the Court finds and declares that Defendants have violated the UCL and
4 committed unfair and unlawful business practices by failing to pay Plaintiff and other Class
5 Members for all of their hours worked at the applicable rates, by failing to pay missed meal and rest
6 period premiums; by failing to reimburse Plaintiff and other Class Members for business expenses
7 incurred on behalf of Defendants; and

8 b. Restitution, including, but not limited to, the relief permitted by the
9 California Labor Code (*i.e.*, meal period premiums and rest period premiums) to the Class Members
10 during the Class Period.

11 10. On the Eight Cause of Action:

12 a. A civil penalty against Defendants in the amount of \$100 for the initial
13 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
14 Labor Code for Plaintiff and for each of the Aggrieved Employees during all of the pay periods in
15 the PAGA Period;

16 b. All penalties available under Section 226.3 of the California Labor Code and
17 the Labor Code Private Attorneys General Act of 2004;

18 c. An award of reasonable attorneys' fees against Defendants as specified in
19 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
20 the PAGA claims;

21 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
22 connection with Plaintiff' and Aggrieved Employees' PAGA claim against Defendants as provided
23 for in Labor Code § 2699(g)(1); and

24 11. All other relief as this Court deems just and proper.

25 ///

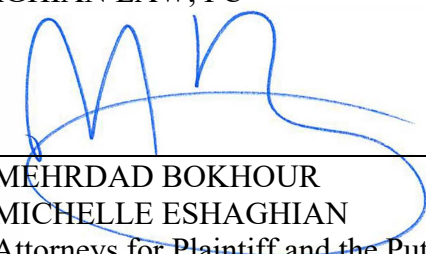
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DEMAND FOR JURY TRIAL

Plaintiff hereby demand a jury trial of the Class Members' claims against Defendants.

Dated: November 23, 2021

BOKHOUR LAW GROUP, P.C.
ESHAGHIAN LAW, PC

BY: 

MEHRDAD BOKHOUR
MICHELLE ESHAGHIAN
Attorneys for Plaintiff and the Putative Class

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the
Stars, Suite 450, Los Angeles, California 90067.

5 On November 23, 2021, I served the following document(s) described as **FIRST**
6 **AMNEDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

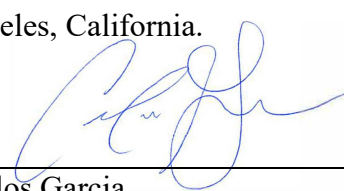
7 Pro-tek Manufacturing, Inc.
8 c/o Steven Krider
4849 South Front Road
9 Livermore, California 94551

10 **Agent for Service of Process for Defendant**
Pro-Tek Manufacturing, Inc.

11 **BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles, California.
12 The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the firm's
13 practice of collection and processing of correspondence for mailing. Under that practice, the
correspondence is deposited with the U.S. Postal Service on that same day in the ordinary course
of business.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed on November 23, 2021, at Los Angeles, California.

17 
18 _____
Carlos Garcia