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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANDRES CASAS, individually, and on
behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

MYERS POWER PRODUCTS, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVDS1920109

Honorable David Cohn
Department S26

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment)
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code

§§ 2800 and 2802 (Unreimbursed Business Expenses);
(10) Violation of California Business & Professions Code §§ 17200, et seq.
(11) Violation of California Labor Code § 2698, et seq. (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ANDRES CASAS (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

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4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of San Bernardino. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of San Bernardino. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of San Bernardino.

PARTIES

5. Plaintiff ANDRES CASAS is an individual residing in the State of California, County of San Bernardino.

6. Defendant MYERS POWER PRODUCTS, INC., at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of San Bernardino.

7. At all relevant times, Defendant MYERS POWER PRODUCTS, INC. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants MYERS POWER PRODUCTS, INC. and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.

Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant MYERS POWER PRODUCTS, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

11. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from July 10, 2015 to final judgment and who reside in California.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.
- b. Typicality: Plaintiff’s claims are typical of all other class members’ as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom he has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to
27 pay their hourly-paid or non-exempt employees within the State of
28 California for all hours worked and missed (short, late, interrupted,

and/or missed altogether) meal periods and rest breaks in violation of California law;

- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or over six (6) consecutive days per workweek and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants engaged in an improper rounding policy during the relevant time period;
- e. Whether Defendants engaged in an improper practice of deducting time for meal periods and/or failed to properly record meal periods;
- f. Whether Defendants failed to use shift differentials/earned commissions/non-discretionary bonuses/non-discretionary monetary and non-monetary incentives/non-discretionary production and/or performance pay to calculate the regular rate of pay used to calculate overtime rates for the payment of overtime wages where Plaintiff and the other class members earned shift differentials/earned commissions/non-discretionary bonuses/non-discretionary monetary and non-monetary incentives/non-discretionary production and/or performance pay and overtime wages in the same workweek;
- g. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- h. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- i. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;

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- 1 j. Whether Defendants failed to timely pay all wages due to Plaintiff and
2 the other class members during their employment;
- 3 k. Whether Defendants complied with wage reporting as required by the
4 California Labor Code; including, *inter alia*, section 226;
- 5 l. Whether Defendants kept complete and accurate payroll records as
6 required by the California Labor Code, including, *inter alia*, section
7 1174(d);
- 8 m. Whether Defendants failed to reimburse Plaintiff and the other class
9 members for necessary business-related expenses and costs, including
10 and not limited to, whether Defendants failed to provide and/or
11 reimburse business expenses, including without limitation the cost of
12 tools, toolboxes, personal protective equipment, uniforms, steel-toed
13 boots, and/or use of personal cell phones and/or vehicles required for
14 work or pay double-minimum wage per IWC Wage Orders (including,
15 *inter alia*, Wage Order Nos. 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 §
16 9(b));
- 17 n. Whether Defendants' conduct was willful or reckless;
- 18 o. Whether Defendants engaged in unfair business practices in violation of
19 California Business & Professions Code section 17200, et seq.;
- 20 p. The appropriate amount of damages, restitution, and/or monetary
21 penalties resulting from Defendants' violation of California law; and
- 22 q. Whether Plaintiff and the other class members are entitled to
23 compensatory damages pursuant to the California Labor Code.

24 **PAGA ALLEGATIONS**

25 17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
26 Defendants.

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1 18. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for a civil penalty, including unpaid wages and premium
3 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself and other current or former employees pursuant to procedures outlined in
6 California Labor Code section 2699.3.

7 19. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
8 employee,” who is any person that was employed by Defendants and the alleged violator and
9 against whom one or more of the alleged violations was committed.

10 20. Plaintiff was employed by Defendants and the alleged violations were
11 committed against him during his time of employment and he is, therefore, an aggrieved
12 employee. Plaintiff and the other employees are “aggrieved employees” as defined by
13 California Labor Code section 2699(c) in that they are current or former employees of
14 Defendants, and one or more of the alleged violations were committed against them.

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

18 a. The aggrieved employee shall give written notice by certified mail
19 (hereinafter “Employee's Notice”) to the LWDA and the employer of the
20 specific provisions of the California Labor Code alleged to have been
21 violated, including the facts and theories to support the alleged
22 violations.

23 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employer by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar days
26 of the postmark date of the Employee’s Notice. Upon receipt of the
27 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
28 (65) calendar days of the postmark date of the Employee’s Notice, the

aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

22. On December 28, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant MYERS POWER PRODUCTS, INC. of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

23. Plaintiff did not receive a response from the LWDA within sixty-five (65) days of the date of the submissions of Plaintiff's notice.

24. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including, *inter alia*, Wage Order Nos. 1-2001, 4-2001 and 7-2001, have been satisfied.

GENERAL ALLEGATIONS

25. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of San Bernardino.

26. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee in the position of "Machine Operator" and "Production Supervisor", from approximately February 2017 to approximately February 2018, in the State of California, County of San Bernardino. As a Production Supervisor, Plaintiff's job duties included, but were not limited to, operating machinery, maintaining quality-control, and maintaining production.

27. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and short, late, interrupted, and/or missed meal periods and/or rest breaks.

28. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

29. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

30. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

31. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

32. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) consecutive days in a workweek during their employment with Defendants.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or missed meal periods and rest breaks in violation of California law.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked. Defendants' failure includes, *inter alia*, failing to compensate Plaintiff and the other class members for job duties performed off-the-clock, including, but not limited to, gathering necessary tools, engaging in scheduling discussions, donning and doffing uniforms and/or protective gear, completing time-sensitive demands, reviewing and completing documentation, operating machinery, engaging in meetings between supervisors and employees, completing assigned tasks, engaging in improper rounding of time, and engaging in improper automatic deduction of time for meal periods and/or not properly

1 recording meal periods.

2 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 failed to use shift differentials/earned commissions/non-discretionary bonuses/non-
4 discretionary monetary and non-monetary incentives/non-discretionary production and/or
5 performance pay/shift differentials to calculate the regular rate of pay used to calculate
6 overtime rates for the payment of overtime wages where Plaintiff and the other class members
7 earned shift differentials/earned commissions/non-discretionary bonuses/non-discretionary
8 monetary and non-monetary incentives/non-discretionary production and/or performance pay
9 and overtime wages in the same workweek.

10 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 failed to provide Plaintiff and the other class members all required rest and meal periods during
12 the relevant time period as required under the Industrial Welfare Commission Wage Orders
13 and thus they are entitled to any and all applicable penalties. Defendants' failure included,
14 *inter alia*, failing to provide uninterrupted ten (10) minute rest periods and timely,
15 uninterrupted thirty (30) minute meal periods to Plaintiff and the other class members.
16 Plaintiff and the other class members were required to perform work during meal periods and
17 rest periods. Plaintiff and the other class members were also required to remain on premises
18 during rest periods.

19 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to relieve Plaintiff and other class members of all duties, failed to relinquish control over
21 Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class
22 members a reasonable opportunity to take, and impeded or discouraged them from taking thirty
23 (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
24 shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal
25 breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

26 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class

1 member's regular rate of pay when a meal period was short, late, interrupted, and/or missed,
2 and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's
3 and the other class member's regular rate of pay when a meal period was short, late,
4 interrupted, and/or missed. During the relevant time period, Plaintiff's and the other class
5 members' meal periods were missed, short, late and/or interrupted because Defendants
6 required them to perform work duties, including, but not limited to completing time-sensitive
7 demands, reviewing and completing documentation, operating machinery, engaging in
8 meetings between supervisors and employees, and completing assigned tasks.

9 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed to provide, authorize, and permit Plaintiff and other class members take full,
11 uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6)
12 hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten
13 (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
14 breaks in the middle of each work period.

15 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other class members were entitled to receive
17 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
18 member's regular rate of pay when a rest period was short, late, interrupted, and/or missed, and
19 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
20 the other class members' regular rate of pay when a rest period was short, late, interrupted,
21 and/or missed. During the relevant time period, Plaintiff's and the other class members' rest
22 periods were missed, short, late and/or interrupted because Defendants required them to
23 perform work duties during their purported rest periods, including, but not limited to,
24 completing time-sensitive demands, reviewing and completing documentation, operating
25 machinery, engaging in meetings between supervisors and employees, and completing
26 assigned tasks.

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1 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 at least minimum wages for compensation and that they were not receiving at least minimum
4 wages for all hours worked. Defendants' failure to pay minimum wages include, *inter alia*,
5 Defendants' effective payment of zero dollars per hour for all time Plaintiff and the other class
6 members worked off-the-clock performing work duties, and as result of Defendants' improper
7 rounding of time and automatic deduction of time for meal periods.

8 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all wages owed to them upon discharge or resignation, including overtime and minimum wages
11 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
12 them at the time of their discharge or resignation.

13 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 all wages owed to them during their employment. Plaintiff and the other class members did
16 not receive payment of all wages, including earned, but unpaid, overtime and minimum wages
17 and meal and rest period premiums, within any time permissible under California Labor Code
18 section 204.

19 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members were entitled to receive
21 complete and accurate wage statements in accordance with California law, but, in fact, they did
22 not receive complete and accurate wage statements from Defendants. The deficiencies
23 included, *inter alia*, the failure to include the accurate total number of hours worked by
24 Plaintiff and the other class members and the accurate net/gross wages earned, including work
25 performed off-the-clock.

26 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Defendants had to keep complete and accurate payroll records
28 for Plaintiff and the other class members in accordance with California law, but, in fact, did

1 not keep complete and accurate payroll records reflecting the accurate hours worked and the
2 accurate wages earned by Plaintiff and the other class members.

3 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to
5 reimbursement for necessary business-related expenses, including but not limited to, the use of
6 personal phones and vehicles for business-related matters and the cost of purchasing and/or
7 maintaining equipment, footwear, tools, toolboxes, protective gear, and apparel to comply with
8 the dress code. Further, Defendants failed to provide and/or reimburse the tools necessary to
9 perform job duties or pay double-minimum wage as required by applicable IWC Wage Orders
10 (including, *inter alia*, Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § 9(b)).

11 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that they had a duty to compensate Plaintiff and the other class
13 members pursuant to California law, and that Defendants had the financial ability to pay such
14 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
15 represented to Plaintiff and the other class members that they were properly denied wages, all
16 in order to increase Defendants' profits.

17 48. During the relevant time period, Defendants failed to pay overtime wages to
18 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
19 class members did not receive overtime compensation at one-and-one-half times the regular
20 rate of pay for all hours spent performing job duties in excess of eight (8) hours per day, forty
21 (40) hours per week, and/or the first eight (8) hours worked on the seventh day of work in a
22 workweek.

23 49. During the relevant time period, Defendants failed to use shift
24 differentials/earned commissions/non-discretionary bonuses/non-discretionary monetary and
25 non-monetary incentives/non-discretionary production and/or performance pay to calculate the
26 regular rate of pay used to calculate overtime rates for the payment of overtime wages where
27 Plaintiff and the other class members earned shift differentials/earned commissions/non-
28 discretionary bonuses/non-discretionary monetary and non-monetary incentives/non-

discretionary production and/or performance pay and overtime wages in the same workweek.

50. During the relevant time period, Defendants failed to provide all requisite uninterrupted meal and rest periods to Plaintiff and the other class members.

51. During the relevant time period, Defendants failed to pay Plaintiff and the other class members at least minimum wages for all hours worked, including work performed off-the-clock.

52. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all wages owed to them upon discharge or resignation, including earned and unpaid overtime and minimum wages and meal and rest period premiums.

53. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204, including earned and unpaid overtime and minimum wages and meal and rest period premiums.

54. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members. The deficiencies included, *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the other class members and the accurate net/gross wages earned, including work to be performed off-the-clock.

55. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members. The deficiencies included, *inter alia*, the failure to record the accurate total number of hours worked by Plaintiff and the other class members and the accurate net/gross wages earned.

56. During the relevant time period, Defendants failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs, including, but not limited to, the use of personal phones and vehicles for business-related matters and the cost of purchasing and/or maintaining equipment, footwear, tools, toolboxes, protective gear, and apparel to comply with the dress code. Further, Defendants failed to provide and/or reimburse the tools necessary to perform job duties or pay double-minimum wage as required by applicable

IWC Wage Orders (including, *inter alia*, Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § 9(b)).

57. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

58. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)

59. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 58 and each and every part thereof with the same force and effect as though fully set forth herein.

60. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day and up to and including twelve (12) hours, more than forty (40) hours in a week, or the first eight (8) hours worked on the seventh day in a workweek.

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62. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

63. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

64. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours, and/or in excess of six (6) consecutive days in a week including performing work duties off-the-clock including, but not limited to gathering necessary tools, engaging in scheduling discussions, donning and doffing uniforms and/or protective gear, completing time-sensitive demands, reviewing and completing documentation, operating machinery, engaging in meetings between supervisors and employees, and completing assigned tasks.

65. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members. Plaintiff and other class members did not receive overtime compensation at one-and-one-half times the regular hourly rate for all hours spent performing job duties in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day.

66. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

67. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 226.7 and 512(a))**

3 **(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)**

4 68. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 67, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 69. At all relevant times, the IWC Order and California Labor Code sections 226.7
8 and 512(a) were applicable to Plaintiff's and the other class members' employment by
9 Defendants.

10 70. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any meal or rest period mandated by an
12 applicable order of the California IWC.

13 71. At all relevant times, the applicable IWC Wage Order and California Labor
14 Code section 512(a) provide that an employer may not require, cause or permit an employee to
15 work for a work period of more than five (5) hours per day without providing the employee
16 with a meal period of not less than thirty (30) minutes, except that if the total work period per
17 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
18 consent of both the employer and employee.

19 72. At all relevant times, the applicable IWC Wage Order and California Labor
20 Code section 512(a) further provide that an employer may not require, cause or permit an
21 employee to work for a work period of more than ten (10) hours per day without providing the
22 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
23 that if the total hours worked is no more than twelve (12) hours, the second meal period may
24 be waived by mutual consent of the employer and the employee only if the first meal period
25 was not waived.

26 73. During the relevant time period, Plaintiff and the other class members who were
27 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
28 their legally-mandated meal periods by mutual consent, were required to work for periods

1 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
2 minutes and/or rest period.

3 74. During the relevant time period, Plaintiff and the other class members who were
4 scheduled to work for a period of time in excess of six (6) hours were required to work for
5 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
6 (30) minutes and/or rest period.

7 75. During the relevant time period, Plaintiff and the other class members' meal
8 periods were missed, shortened, late, and/or interrupted because Defendants required them to
9 perform work duties off-the-clock including, but not limited to gathering necessary tools,
10 engaging in scheduling discussions, donning and doffing uniforms and/or protective gear,
11 completing time-sensitive demands, reviewing and completing documentation, operating
12 machinery, engaging in meetings between supervisors and employees, and completing
13 assigned tasks. Defendants also utilized a bell system to relieve Plaintiff and the other class
14 members of their duties and automatically deducted meal periods from Plaintiff's and the other
15 class members' time records regardless of whether a compliant meal period was taken.

16 76. As a result, Defendants failed to relieve Plaintiff and the other class members of
17 all duties, failed to relinquish control over Plaintiff and the other class members' activities,
18 failed to permit Plaintiff and the other class members a reasonable opportunity to take, and
19 impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no
20 later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to
21 take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work
22 for shifts lasting more than ten (10) hours.

23 77. During the relevant time period, Defendants intentionally and willfully required
24 Plaintiff and the other class members to work during meal periods and failed to compensate
25 Plaintiff and the other class members the full meal period premium for work performed during
26 meal periods.

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1 78. During the relevant time period, Defendants failed to pay Plaintiff and the other
2 class members the full meal period premium due pursuant to California Labor Code section
3 226.7.

4 79. Defendants' conduct violates applicable IWC Wage Order and California Labor
5 Code sections 226.7 and 512(a).

6 80. Pursuant to applicable IWC Wage Order and California Labor Code section
7 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
8 additional hour of pay at the employee's regular rate of compensation for each work day that
9 the meal or rest period is not provided.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of California Labor Code § 226.7)**

12 **(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)**

13 81. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 80, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

16 82. At all times herein set forth, the applicable IWC Wage Order and California
17 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
18 employment by Defendants.

19 83. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC.

22 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3 ½) hours.

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1 85. During the relevant time period, Defendants required Plaintiff and other class
2 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
3 rest period per each four (4) hour period worked.

4 86. During the relevant time period, Plaintiff's and the other class members' rest
5 periods were missed, short, late and/or interrupted because Defendants required them to
6 perform work duties during their purported rest periods, including, but not limited to
7 completing time-sensitive demands, reviewing and completing documentation, operating
8 machinery, engaging in meetings with supervisors and employees, and completing assigned
9 tasks.

10 87. As a result, Defendants failed to provide, authorize, or permit Plaintiff and the
11 other class members to take a full, uninterrupted, off-duty rest period for every shift lasting
12 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
13 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
14 permit, and provide such rest breaks in the middle of each work period.

15 88. During the relevant time period, Defendants willfully required Plaintiff and the
16 other class members to work during rest periods and failed to pay Plaintiff and the other class
17 members the full rest period premium for work performed during rest periods.

18 89. During the relevant time period, Defendants failed to pay Plaintiff and the other
19 class members the full rest period premium due pursuant to California Labor Code section
20 226.7.

21 90. Defendants' conduct violates applicable IWC Wage Orders and California
22 Labor Code section 226.7.

23 91. Pursuant to the applicable IWC Wage Orders and California Labor Code section
24 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
25 additional hour of pay at the employees' regular hourly rate of compensation for each work
26 day that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)**

4 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 91, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 93. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
8 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
9 than the minimum so fixed is unlawful.

10 94. During the relevant time period, Defendants failed to pay minimum wage to
11 Plaintiff and the other class members as required, pursuant to California Labor Code sections
12 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*,
13 Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class
14 members worked off-the-clock performing work duties and also implementing an improper
15 rounding procedure and automatically deducting meal periods from Plaintiff's and other class
16 members' time records regardless of whether a complaint meal period was taken.

17 95. During the relevant time period, Plaintiff and the other class members were
18 required to perform job duties off-the-clock, including, but not limited to, gathering necessary
19 tools, engaging in scheduling discussions, donning and doffing uniforms and/or protective
20 gear, completing time-sensitive demands, reviewing and completing documentation, operating
21 machinery, engaging in meetings between supervisors and employees, and completing
22 assigned tasks.

23 96. During the relevant time period, Plaintiff and the other class members were not
24 compensated at the minimum wage for the time they spent performing job duties off-the-clock.

25 97. Defendants' failure to pay Plaintiff and the other class members the minimum
26 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
27 those sections Plaintiff and the other class members are entitled to recover the unpaid balance
28 of their minimum wage compensation as well as interest, costs, and attorney's fees, and

1 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

2 98. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
3 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
4 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
5 minimum wages.

6 99. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
7 members are entitled to recover liquidated damages in an amount equal to the wages
8 unlawfully unpaid and interest thereon.

9 **FIFTH CAUSE OF ACTION**

10 **(Violation of California Labor Code §§ 201 and 202)**

11 **(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)**

12 100. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 99, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 101. At all relevant times herein set forth, California Labor Code sections 201 and
16 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
17 time of discharge are due and payable immediately, and if an employee quits his or her
18 employment, his or her wages shall become due and payable not later than seventy-two (72)
19 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
20 intention to quit, in which case the employee is entitled to his or her wages at the time of
21 quitting.

22 102. During the relevant time period, Plaintiff and the other class members were
23 required to perform job duties off-the-clock, including, but not limited to, gathering necessary
24 tools, engaging in scheduling discussions, donning and doffing uniforms and/or protective
25 gear, completing time-sensitive demands, reviewing and completing documentation, operating
26 machinery, engaging in meetings between supervisors and employees, and completing
27 assigned tasks.

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1 103. During the relevant time period, Plaintiff and the other class members were not
2 compensated at the minimum wage for the time they spent performing job duties off the clock.

3 104. During the relevant time period, Plaintiff and the other class members were not
4 paid overtime wages owed to them for all the time they spent performing job duties off the
5 clock in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8)
6 hours worked on the seventh day of work.

7 105. During the relevant time period, Plaintiff and the other class members were
8 required to perform work duties, including, but not limited to, completing time-sensitive
9 demands, reviewing and completing documentation, operating machinery, engaging in
10 meetings between supervisors and employees, and completing assigned tasks, which resulted
11 in late, short, and/or interrupted meal periods.

12 106. During the relevant time period, Plaintiff and the other class members' rest
13 periods were missed, short, late, and/or interrupted because Defendant required them to
14 perform work duties, including, but not limited to, completing time-sensitive demands,
15 reviewing and completing documentation, operating machinery, engaging in meetings with
16 supervisors and employees, and completing assigned tasks.

17 107. During the relevant time period, Plaintiff and the other class members were not
18 paid the full meal period premium for work performed during meal periods, which were due
19 pursuant to California Labor Code section 226.7.

20 108. During the relevant time period, Plaintiff and other class members were not paid
21 the full rest period premium for work performed during rest periods, which were due pursuant
22 to California Labor Code section 226.7.

23 109. As a result, during the relevant time period, Plaintiff and the other class
24 members did not receive all of their wages, earned and unpaid, within seventy-two (72) hours
25 of leaving Defendants' employ.

26 110. During the relevant time period, Defendants intentionally and willfully failed to
27 pay Plaintiff and the other class members who are no longer employed by Defendants their
28 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

111. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

112. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

113. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against MYERS POWER PRODUCTS, INC., and DOES 1 through 100)

114. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 113, and each and every part thereof with the same force and effect as though fully set forth herein.

115. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

116. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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117. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

118. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

119. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)

119. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 118, and each and every part thereof with the same force and effect as though fully set forth herein.

120. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

121. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the accurate total wages earned and the accurate total number of hours worked by Plaintiff and the other class members, including but not limited to work performed off-the-clock and as a result of improper rounding of time and improper automatic deduction of time for meal periods.

122. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

123. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

124. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

125. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)

126. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 125, and each and every part thereof with the same force and effect as though fully set forth herein.

127. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the

number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

128. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

129. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

130. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)

131. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 130, and each and every part thereof with the same force and effect as though fully set forth herein.

132. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

133. During the relevant time period, IWC Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § were applicable to Plaintiff's and the other class members' employment with Defendants, which requires, in part, that if tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be

provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may be required to provide and maintain tools and equipment.

134. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to , the use of personal phones and vehicles for business-related matters and the cost of purchasing and/or maintaining equipment, footwear, tools, toolboxes, protective gear, and apparel to comply with the dress code. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs. Further, Defendants failed to provide and/or reimburse the tools, toolboxes, personal protective equipment, uniforms, steel-toed boots, and/or use of personal cell phones and/or vehicles necessary to perform job duties or pay double-minimum wage as required by applicable IWC Wage Orders (including, *inter alia*, Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § 9(b)).

135. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against MYERS POWER PRODUCTS, INC. and DOES 1 through 100)

136. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 135, and each and every part thereof with the same force and effect as though fully set forth herein.

137. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

1 138. Defendants' activities as alleged herein are violations of California law, and
2 constitute unlawful business acts and practices in violation of California Business &
3 Professions Code section 17200, et seq.

4 139. A violation of California Business & Professions Code section 17200, et seq.
5 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
6 policies and practices of requiring employees, including Plaintiff and the other class members,
7 to work overtime without paying them proper compensation violate California Labor Code
8 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
9 employees, including Plaintiff and the other class members, to work through their meal and
10 rest periods without paying them proper compensation violate California Labor Code sections
11 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate
12 California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and
13 practices of failing to timely pay wages to Plaintiff and the other class members violate
14 California Labor Code sections 201 through 204. Defendants also violated California Labor
15 Code sections 226(a), 1174(d), 2800 and 2802.

16 140. As a result of the herein described violations of California law, Defendants
17 unlawfully gained an unfair advantage over other businesses.

18 141. Plaintiff and the other class members have been personally injured by
19 Defendants' unlawful business acts and practices as alleged herein, including but not
20 necessarily limited to the loss of money and/or property.

21 142. Pursuant to California Business & Professions Code sections 17200, et seq.,
22 Plaintiff and the other class members are entitled to restitution of the wages withheld and
23 retained by Defendants during a period that commences July 10, 2015; an award of attorneys'
24 fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws;
25 and an award of costs.

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ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against MYERS POWER PRODUCTS, INC., and DOES 1 through 100)

143. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 142, and each and every part thereof with the same force and effect as though fully set forth herein.

144. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

145. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

146. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

147. Defendants’ failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failing to Provide Meal Periods

148. Defendants’ failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

149. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

150. Defendants' failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

Failure to Timely Pay Wages Upon Termination

151. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

152. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

153. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

154. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

155. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as well as Defendants' failure to provide and/or reimburse the tools, toolboxes, personal protective equipment,

1 uniforms, steel-toed boots, and/or use of personal cell phones and/or vehicles necessary to
2 perform job duties or pay double-minimum wage as required by applicable IWC Wage Orders
3 (including, *inter alia*, Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § 9(b)) as alleged
4 above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections
5 2800 and 2802.

6 156. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
7 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each
8 of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
9 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties
10 against Defendants, and each of them, including but not limited to:

- 11 a. Penalties under California Labor Code section 2699 in the amount of a
12 hundred dollars (\$100) for each aggrieved employee per pay period for the
13 initial violation, and two hundred dollars (\$200) for each aggrieved
14 employee per pay period for each subsequent violation;
- 15 b. Penalties under California Code of Regulations Title 8 section 11010, *et*
16 *seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per
17 pay period for the initial violation, and one hundred dollars (\$100) for
18 each aggrieved employee per pay period for each subsequent violation;
- 19 c. Penalties under California Labor Code section 210 in addition to, and
20 entirely independent and apart from, any other penalty provided in the
21 California Labor Code in the amount of a hundred dollars (\$100) for each
22 aggrieved employee per pay period for the initial violation, and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation; and
- 25 d. Any and all additional penalties and sums as provided by the California
26 Labor Code and/or other statutes.

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157. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

158. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first ten causes of action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

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

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

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

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

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

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

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18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer

employed by Defendants;

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

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

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

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

38. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

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

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

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

43. For such other and further relief as the Court may deem just and proper.

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As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

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

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802 and failing to provide and/or reimburse the tools necessary to perform job duties or pay double-minimum wage as required by applicable IWC Wage Orders (including, *inter alia*, Wage Orders 1-2001 § 9(b), 4-2001 § 9(b), and 7-2001 § 9(b));

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

50. For the imposition of civil penalties and/or statutory penalties;

51. For reasonable attorneys' fees and costs of suit incurred herein; and

52. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

53. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

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

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

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

58. For such other and further relief as the Court may deem just and proper.

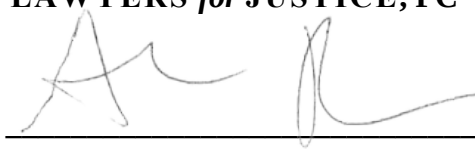
As to the Eleventh Cause of Action

59. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including, *inter alia*, Wage Order Nos. 1-2001, 4-2001 and 7-2001; and

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

Dated: February 1, 2023

LAWYERS for JUSTICE, PC

By: 

Alexandra Rose
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On April 3, 2023, I served the foregoing document described as: **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties in this action follows:

Matthew C. Kane (mkane@bakerlaw.com)
Amy Beverlin (abeverlin@bakerlaw.com)
Baker & Hostetler, LLP
11601 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025

Attorneys for Defendant Myers Power Products, Inc.

[X] BY E-MAIL

The above-referenced document was transmitted to the person(s) at the e-mail addresses listed herein at their most recent known e-mail address or e-mail of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

State of California, Labor & Workforce Development Agency
Web URL:

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

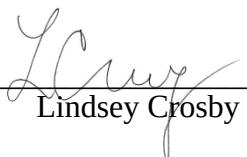
[X] BY ONLINE SUBMISSION

The foregoing document was transmitted to the California Labor and Workforce Development Agency through the online system established for the submission of notices and documents, in conformity with California Labor Code section 2699(l). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

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

Executed on April 3, 2023, at Glendale, California.


Lindsey Crosby