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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 28 2023

BY 
GLORIA MARIN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CHARLIE HEAR, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

INTERNATIONAL PAVING SERVICES,
INC., a California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CIVSB2133787

**SECOND AMENDED CLASS ACTION
AND PAGA COMPLAINT:**

- (1) FAILURE TO TIMELY PAY WAGES;
- (2) FAILURE TO PAY OVERTIME WAGES;
- (3) FAILURE TO PAY ALL SICK TIME WAGES;
- (4) MEAL PERIOD VIOLATIONS;
- (5) REST PERIOD VIOLATIONS;
- (6) FAILURE TO PROVIDE RECOVERY PERIODS;
- (7) FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES;
- (8) WAGE STATEMENT VIOLATIONS;
- (9) WAITING TIME PENALTIES;
- (10) UNFAIR COMPETITION; and
- (11) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Charlie Hear (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges, and complains of Defendants International Paving Services, Inc.
3 (“Defendant”), and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a corporation, doing business as a commercial paving service in
6 California.

7 2. Plaintiff brings this class and PAGA representative action against Defendants for
8 alleged violations of the California Labor Code and Business and Professions Code.

9 3. As set forth below, Plaintiff alleges that Defendants failed and continue to fail to
10 timely pay wages within seven (7) calendar days of the weekly pay period in violation of Labor Code
11 § 204.

12 4. Plaintiff further alleges that Defendants failed and continue to fail to properly calculate
13 non-exempt employees’ overtime rate by failing to include all forms of non-discretionary
14 compensation in calculating the “regular rate of pay.” As a result, Plaintiff and other similarly situated
15 employees were not paid overtime at the correct overtime rate. Likewise, Plaintiff alleges that
16 Defendants uniformly failed to pay all sick time at “regular rate of pay.”

17 5. Plaintiff further alleges that Defendants’ meal and rest period policies and practices
18 failed to provide him and all other similarly situated employees with compliant meal and rest breaks
19 and failed to provide recovery periods or pay meal and rest premium pay at the “regular rate of pay”
20 in lieu thereof. As a result, Plaintiff alleges that Defendants failed to provide non-exempt employees
21 with accurate written itemized wage statements and failed to timely pay all final wages upon
22 separation of employment. Finally, Plaintiff alleges that Defendants failed to reimburse him and other
23 non-exempt employees for necessary business expenditures.

24 6. Based on these alleged Labor Code violations, Plaintiff now brings this class and
25 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
26 on behalf of himself and all others similarly situated.

27 **JURISDICTION AND VENUE**

28 7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings this class action for recovery of unpaid wages and penalties under California Labor Code §§ 200, 201-203, 204, 210, 218.5, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802-2804, 2698 *et seq.*, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq.*

9. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

10. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as Defendants own, maintain offices, transact business, have an agent or agents within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

11. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee with the title “Laborer” in the County of San Bernardino.

12. Plaintiff is informed and believes and thereon alleges that defendant International Paving Services, Inc. is a corporation authorized and doing business in San Bernardino County, California; and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.

13. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§ 201-203, 204, 210, 218.5, 226, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802-2804, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

14. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of San Bernardino.

2 15. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
6 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
7 corporate, were responsible in some manner for the acts and omissions alleged herein, and
8 proximately caused the Classes to be subject to the unlawful employment practices alleged herein.

9 16. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
11 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
12 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
13 them, were the agents, servants, and employees of each and every one of the other Defendants, as
14 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
15 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
16 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

17 17. At all times, Defendants, and each of them, were members of and engaged in a joint
18 venture, partnership, and common enterprise, and acting within the course and scope of and in
19 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all
20 Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

21 **COMMON FACTUAL ALLEGATIONS**

22 18. Defendant International Paving Services, Inc. specializes in providing paving services,
23 including new asphalt, fabric asphalt overlays, pulverize grade and pave, asphalt removal and
24 replacement. Defendant is strategically located to mobilize and serve clients across southern
25 California.

26 19. Plaintiff was employed by Defendants as a non-exempt laborer employee since 2011
27 until his termination on or about September 22, 2021. Plaintiff and other non-exempt employees were
28 employed as non-exempt employees working for Defendants in California and were responsible for

1 all aspects of Defendants' commercial paving construction services throughout California.

2 20. First, at all relevant times, Defendants paid Plaintiff and other non-exempt employees
3 on a weekly basis but failed and continues to fail to pay not more than seven (7) calendar days
4 following the close of the payroll period in violation of Labor Code § 204(d).

5 21. Here, Plaintiff and other non-exempt employees were and are routinely paid on a
6 weekly payroll, but Defendants failed to pay all wages within seven (7) calendar days of the close of
7 the payroll period.

8 22. For instance, for the pay period 9/13/21 to 9/19/21 Defendants paid Plaintiff on
9 9/28/21, nine (9) calendar days after the close of the payroll period. This late payment of wages by
10 Defendants is consistent throughout the relevant liability period.

11 23. Labor Code § 204 "pertains to the timing of wage payments" and serves a very
12 important public policy objective. "It has long been recognized that wages are not ordinary debts, . .
13 . and that, because of the economic position of the average worker and, in particular, his dependence
14 on wages for the necessities of life for himself and his family, it is essential to the public welfare that
15 he receive his pay when it is due." (See also *In re Trombley* (1948) 31 Cal. 2d.801, 810-11 (citing *In*
16 *re Moffett* (1937) 19 Cal.App.2d 7, 19).

17 24. The penalties for violating Labor Code § 204 are set forth in Labor Code section
18 210(a) as follows: [E]very person who fails to pay the wages of each employee as provided in Sections
19 . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
20 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful
21 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
22 percent of the amount unlawfully withheld.

23 25. Due to Defendants' uniform late payment of wages to Plaintiff and the other non-
24 exempt employees, Defendants violated the provisions of Labor Code § 204 and the applicable Wage
25 Orders. Accordingly, Plaintiff and other non-exempt employees are entitled to recover civil penalties
26 in the amount of \$100 for the first violation and \$200 for each subsequent violation, plus 25% of the
27 amount unlawfully withheld pursuant to Labor Code § 210(a).

1 26. Furthermore, at all relevant times, non-exempt employees were not properly paid at
2 the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
3 (40) hours per workweek due to Defendants' uniform failure to include all forms of
4 compensation/renumeration, including, but not limited to, non-discretionary bonuses and other
5 renumeration, when calculating the regular rate of pay used in overtime calculations.

6 27. Under the California Labor Code (as well as the FLSA), courts have held that regularly
7 paid non-discretionary pay/bonuses must be included in determining an employee's "regular rate of
8 pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-
9 856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating
10 the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal.
11 2006) [granting summary judgement to Plaintiffs under California and federal law on the grounds,
12 tat defendant improperly calculated overtime by excluding annual bonuses paid to employees from
13 the "regular rate of compensation"].)

14 28. Here, although Defendants consistently paid non-exempt employees various non-
15 discretionary bonuses, safety bonuses, and other renumeration, Defendants omitted these payments
16 when calculating the regular rate of pay used in overtime calculations and when paying overtime to
17 non-exempt employees.

18 29. Labor Code § 510 requires an employer to compensate an employee who works more
19 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
20 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
21 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
22 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
23 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
24 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
25 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
26 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

27 30. By their policy of requiring non-exempt employees to work in excess of eight (8)
28 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of

1 one-half (11/2) their regular rate of pay, Defendants willfully violated the provisions of Labor Code
2 § 510 and the applicable Wage Orders.

3 31. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
4 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
5 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
6 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
7 is underpaid. . . [and] (2) [f]or each subsequent violation for the same specific offense, two hundred
8 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
9 underpaid regardless of whether the initial violation is intentionally committed.

10 32. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
11 employees for all overtime wages at the proper overtime rates and also by failing to include all forms
12 of compensation/renumeration, when calculating the regular rate of pay used in overtime calculations.
13 As a result of this practice, non-exempt employees are not compensated at the appropriate premium
14 overtime rate for all overtime hours that they work in violation of Labor Code §§ 204, 210, 510, 1194,
15 1197.1, 1199, and applicable Wage Orders.

16 33. Accordingly, to the extent permitted by law, non-exempt employees are entitled to
17 recover liquidated damages for violations of Labor Code § 1197.1.

18 34. Based upon these factual allegations, non-exempt employees are entitled to unpaid
19 wages and penalties under Labor Code § 1199.

20 35. Next, at all relevant times, Defendants failed in their obligation to pay Plaintiff and
21 other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
22 pursuant to Labor Code §§ 246(a), (b).

23 36. Pursuant to Labor Code § § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
24 works in California for the same employer for 30 or more days within a year from the commencement
25 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
26 worked, beginning at the commencement of employment.”

27 37. Furthermore, Labor Code § 246(l)(1) provides that paid sick time for non-exempt
28 employees must be “calculated in the same manner as the regular rate of pay for the workweek in

1 which the employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek.”

3 38. Additionally, Labor Code § 246(1)(2) states that the paid sick time must be “calculated
4 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
5 hours worked in the full pay periods of the prior 90 days of employment.”

6 39. Finally, Labor Code §246(i) requires employers to “provide an employee with written
7 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
8 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
9 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
10 of wages.”

11 40. At all relevant times, Defendants failed in the obligation to pay Plaintiff and other non-
12 exempt employees the legally required paid sick days at the “regular rate of pay” pursuant to Labor
13 Code §§ 246(a), (b). Instead, Defendants paid sick time at the base rate of pay, rather than the “regular
14 rate of pay” as required by Labor Code §§ 246(1)(1-2).

15 41. Additionally, at all relevant times, Plaintiff and other non-exempt employees were
16 often denied timely and compliant 30-minute off-duty meal periods as mandated by California law.
17 As a result of Defendants’ uniform meal period policies/practices and/or work demands, Plaintiff and
18 other non-exempt employees were often unable to take uninterrupted first meal periods before the
19 end of the fifth hour of work. Further, when Plaintiff and other non-exempt employees worked in
20 excess of 10.0 hours in a shift, which was a regular occurrence, they were not always allowed and
21 permitted to take a mandated and timely second meal period before the end of the tenth hour of work
22 in violation of the Labor Code and applicable Wage Orders. In addition, Plaintiff and other non-
23 exempt employees were not provided meal period premiums for missed or non-compliant meal
24 periods at the “regular rate of pay.”

25 42. Accordingly, due to Defendants’ uniform meal period policies/practices, Plaintiff and
26 other non-exempt employees were also regularly denied legally compliant meal periods in violation
27 of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

1 43. Next, at all relevant times, Plaintiff and other non-exempt employees were also not
2 provided with all legally mandated 10-minute rest periods for every 4 hours worked or major fraction
3 thereof as mandated by California law. Defendants failed to provide any 10-minute rest periods for
4 every 4 hours or major fraction thereof. As a result, Plaintiff and other non-exempt employees were
5 and are routinely unable to take (10) minute duty free rest periods for every major fraction of four
6 hours worked due to the workload and demands of the job. This includes a second rest period for
7 shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

8 44. Since Defendants did not offer employees the opportunity to receive compliant and
9 appropriately separately compensated rest periods, “the court may not conclude employees
10 voluntarily chose to skip ... breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App.
11 4th 388, 410 (“[i]f an employer fails to provide legally compliant meal or rest breaks, the court may
12 not conclude employees voluntarily chose to skip those breaks.”)

13 45. Each time Plaintiff and other non-exempt employees were unable to take a compliant
14 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
15 at the “regular rate of pay” as required by Labor Code § 226.7.

16 46. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
17 other non-exempt employees were also regularly denied legally compliant rest breaks in violation of
18 Labor Code §§ 226.7, 512, and applicable Wage Orders.

19 47. Moreover, at all relevant times, Defendants failed to provide Plaintiff and other non-
20 exempt employees timely access to shade upon its employees’ requests. Defendants failed to maintain
21 shade open to the air and failed to provide ventilation or cooling at all times while its employees were
22 present. Defendants further failed to provide sufficient shade to accommodate the number of
23 employees during a typical non-compliant rest period, so they were and are able to sit in a normal
24 posture in the shade without having to be in physical contact with each other. No shade was provided
25 near the areas where employees were and are working.

26 48. Labor Code section 226.7(a) states that, “‘recovery period’ means a cooldown period
27 afforded an employee to prevent heat illness.” Labor Code section 226.7(b) states that, “[a]n
28 employer shall not require an employee to work during a ... recovery period mandated pursuant to

1 an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission, the Occupational and Health Standards Board, or the Division of Occupational Safety
3 and Health.” Labor Code section 226.7(c) states that “[i]f an employer fails to provide an employee
4 a ... recovery period in accordance with a state law, including, but not limited to, an applicable statute
5 or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
6 Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer
7 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for
8 each work day that the ... recovery period is not provided.”

9 49. California Code of Regulations, Title 8, Section 3395(d)(1) provides that, “[s]hade
10 shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature
11 in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more
12 areas with shade at all times while employees are present that are either open to the air or provided
13 with ventilation or cooling ... [t]he shade shall be located as close as practicable to the areas where
14 the employees are working.”

15 50. Here, Defendants failed to provide non-exempt employees timely access to shade
16 upon its employees’ requests. Defendants failed to maintain shade open to the air and failed to provide
17 ventilation or cooling at all times while its employees were present. Defendants further failed to
18 provide sufficient shade to accommodate the number of employees during a typical non-compliant
19 rest period, so they were and are able to sit in a normal posture in the shade without having to be in
20 physical contact with each other. No shade was provided near the areas where employees were and
21 are working. Defendants also failed to provide non-exempt employees the ability to take preventative
22 cool-down rest in the shade when they felt the need to do so in order to protect themselves from
23 overheating. In further violation, Defendants failed to monitor any of its employees during high-heat
24 temperatures, and during high-heat temperatures failed to inquire if they were experiencing symptoms
25 of heat illness (*i.e.*, pale skin, heavy sweating, headache, muscle cramps and fatigue).

26 51. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
27 other non-exempt employees were also regularly denied legally compliant recovery periods in
28 violation of Labor Code § 226.7(a) and applicable Wage Orders and would be entitled to an additional

1 hour of pay for each violation.

2 52. Further, at all relevant times, Defendants required Plaintiff and other non-exempt
3 employees to incur necessary business expenses associated with using their personal cell phones for
4 work related purposes and other business expenses but did not reimburse non-exempt employees for
5 these necessary expenditures. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th
6 1137, 1144 “[i]f an employee is required to make work-related calls on a personal cell phone, then
7 he or she is incurring an expense for the purposes of section 2802. It does not matter whether the
8 phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans
9 to accommodate work-related cell phone usage...To show liability under section 2802, an employee
10 need only show that he or she was required to use a personal cell phone to make work-related calls,
11 and he or she was not reimbursed”]. Indeed, any reimbursement is absent from Plaintiff’s wage
12 statements during his employment.

13 53. Since Defendants failed to and continue to fail to reimburse Plaintiff and other non-
14 exempt employees for necessary business expenses, they are in violation of Labor Code § 2802.

15 54. As a result of Defendants failure to pay Plaintiff and other non-exempt employees for
16 all overtime and sick time wages, and meal and rest period premiums at the “regular rate of pay”,
17 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
18 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
19 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

20 55. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
21 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
22 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
23 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
24 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

25 56. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
26 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of
27 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-
28 exempt employees are in violation of Labor Code § 226 (a). Thus, Defendants have violated Labor

Code § 226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

57. Finally, because of, Defendants' failure to pay all overtime and sick pay wages, and meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders. Thus, non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

58. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Class");

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift and earned any non-discretionary bonus or other remuneration, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Overtime Subclass");

All non-exempt employees who work or worked for Defendants in California, and during the one year immediately preceding the filing of the Complaint through the date of trial. ("Wage Statement Subclass");

All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. ("Waiting Time Penalty Subclass")
(collectively "the Classes")

59. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

1 60. **Common Questions of Law and Fact Predominate/Well Defined Community of**

2 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
3 employees, which predominate over questions affecting only individual members including, without
4 limitation to:

5 1. Whether Defendants failed to timely pay Plaintiff and members of the Class in
6 violation of Labor Code §§ 204 and 210;

7 2. Whether Defendants failed to pay overtime at the appropriate legal rate to members
8 of the Classes;

9 2. Whether Defendants provided legally compliant meal and rest and recovery periods
10 or proper compensation at the “regular rate of pay” in lieu thereof to members of the Classes;

11 3. Whether Defendants furnished legally compliant wage statements to members of the
12 Wage Statement Subclass pursuant to Labor Code § 226(a);

13 4. Whether the timing and amount of payment of final wages to members of the
14 Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

15 5. Whether Defendants properly reimbursed members of the Classes for all necessary
16 business expenditures.

17 61. **Predominance of Common Questions:** Common questions of law and fact
18 predominate over questions that affect only individual members of the Classes. The common
19 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
20 and/or practices applicable to each individual class member, such as Defendants’ policy/practice of
21 failing to pay overtime at the appropriate premium rate, Defendants’ uniform policy of failing to
22 provide compliant meal and rest and recovery periods or adequate compensation in lieu thereof,
23 Defendants’ uniform policy of failing to compensate non-exempt employees for their cell phone
24 expenses incurred at the behest of Defendants, and Defendants’ resulting failure to provide accurate
25 itemized wage statements, and to pay for all wages due upon separation of employment. As such, the
26 common questions predominate over individual questions concerning each individual class member’s
27 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 62. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
3 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
4 Plaintiff, like the members of the Classes was paid wages in an untimely manner, was deprived of
5 overtime and sick pay wages, was deprived of meal and rest period premium wages, was subject to
6 Defendants' uniform meal and rest and recovery period policies/practices, was not reimbursed for
7 required work related expenses, was not provided accurate itemized wage statements, and was not
8 paid all wages owed at the time of his separation of employment.

9 63. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
10 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
11 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
12 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
13 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
14 members of the Classes.

15 64. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
16 important public interest in establishing minimum working conditions and standards in California.
17 These laws and labor standards protect the average working employee from exploitation by
18 employers who have the responsibility to follow the laws and who may seek to take advantage of
19 superior economic and bargaining power in setting onerous terms and conditions of employment. The
20 nature of this action and the format of laws available to Plaintiff and members of the Classes make
21 the class action format a particularly efficient and appropriate procedure to redress the violations
22 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
23 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
24 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

25 65. Moreover, requiring each member of the Classes to pursue an individual remedy
26 would also discourage the assertion of lawful claims by employees who would be disinclined to file
27 an action against their former and/or current employer for real and justifiable fear of retaliation and
28 permanent damages to their careers at subsequent employment. Further, the prosecution of separate

1 actions by the individual class members, even if possible, would create a substantial risk of
2 inconsistent or varying verdicts or adjudications with respect to the individual class members against
3 Defendants herein; and which would establish potentially incompatible standards of conduct for
4 Defendants; and/or legal determinations with respect to individual class members which would, as a
5 practical matter, be dispositive of the interest of the other class members not parties to adjudications
6 or which would substantially impair or impede the ability of the class members to protect their
7 interests. Further, the claims of the individual members of the class are not sufficiently large to
8 warrant vigorous individual prosecution considering all of the concomitant costs and expenses
9 attending thereto. As such, the Classes identified in Paragraph 58 are maintainable as Classes under
10 § 382 of the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY WAGES**

13 **(AGAINST ALL DEFENDANTS)**

14 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 67. Labor Code section 204 expressly requires employers who pay employees on a
16 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
17 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
18 employers who violate Labor Code section 204 subject to a penalty of:

19 “(1) For any initial violation, one hundred dollars (\$100) for each failure to pay
20 each employee.

21 “(2) For each subsequent violation, or any willful or intentional violation, two
22 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
23 of the amount unlawfully withheld.” (Lab. Code, § 210, subd. (a).)

24 68. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
25 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, §
26 210, subd. (a).)

27 69. As described above, Defendants failed to timely pay the Class Members within
28 seven calendar days following the close of the weekly payroll in accordance with Labor Code

1 section § 204 on a regular and consistent basis, and therefore, Plaintiff and members of the Class
2 are entitled to penalties pursuant to Labor Code section 210(a).

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **(AGAINST ALL DEFENDANTS)**

6 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 71. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
8 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
9 worked and provide a private right of action for the failure to pay all overtime compensation for
10 overtime work performed.

11 72. At all times relevant herein, Defendants were required to properly pay Plaintiff and
12 members of Class for all overtime hours worked pursuant to California Labor Code § 1194 and the
13 applicable Wage Orders.

14 73. Section 3 of the applicable Wage Order requires an employer to pay an employee
15 “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
16 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
17 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
18 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
19 the workweek.

20 74. Defendants failed to conform their pay practices to the requirements of the law. This
21 unlawful conduct includes but is not limited to Defendants’ uniform and unlawful policy/practice of
22 failing to include all forms of compensation including, but not limited to, bonuses and other non-
23 discretionary non-hourly pay in calculating the “regular rate of pay” for purposes of paying overtime,
24 which resulted in the Overtime Subclass not being paid all overtime wages owed.

25 75. The foregoing policies and practices are unlawful and create entitlement to recovery
26 by Plaintiff and the members of Overtime Subclass in a civil action for the unpaid amount of overtime
27 wages, including interest thereon, statutory penalties, attorney’s fees, and costs of suit according to
28 Labor Code §§ 204, 210. 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil

1 Procedure § 1021.5.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PAY ALL SICK TIME**

4 **(AGAINST ALL DEFENDANTS)**

5 76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 77. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
7 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
8 the regular rate, including all forms of compensation/remuneration.

9 78. At all times relevant herein, Defendants were required to properly pay Plaintiff and
10 members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

11 79. Defendants failed to conform their pay practices to the requirements of the law. This
12 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
13 failing to include all forms of compensation, including but not limited to shift differentials, non-
14 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
15 pay," which resulted in Plaintiff and the Class not being paid all sick time wages owed.

16 80. The foregoing policies and practices are unlawful and create entitlement to recovery
17 by Plaintiff and the members of the Class in a civil action for the unpaid amount of sick time wages,
18 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
19 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
20 § 1021.5

21 **FOURTH CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 81. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 82. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
26 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
27 and members of the Class, with all required meal periods in accordance with the mandates of the
28 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common

1 Allegations section of this Complaint. Despite Defendants’ violations, Defendants have not paid an
2 additional hour of pay at the “regular rate of pay” to Plaintiff and members of the Class at their
3 respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

4 83. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
6 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

7 **FIFTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 84. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 85. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516
12 establish the right of non-exempt employees to be provided with a rest period of at least ten (10)
13 minutes for each four (4) hour period worked, or major fraction thereof for the reasons set forth in
14 the Common Allegations section of this Complaint.

15 86. Due to their unlawful rest period policy and practices, Defendants did not authorize
16 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
17 legally entitled to. Despite Defendants’ violations, Defendants have not paid an additional hour of
18 pay at the “regular rate of pay” to Plaintiff and members of the Class at their respective regular rates
19 of pay for each violation, in accordance with California Labor Code § 226.7.

20 87. The foregoing violations create an entitlement to recovery by Plaintiff and members
21 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
22 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
23 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE RECOVERY PERIODS**

26 **(AGAINST ALL DEFENDANTS)**

27 88. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 ///

1 89. Plaintiffs re-allege and incorporate by reference the allegations contained in the
2 paragraphs above, as though fully set forth herein.

3 90. Labor Code § 226.7(a) states that, “‘recovery period’ means a cooldown period
4 afforded an employee to prevent heat illness.”

5 91. Labor Code § 226.7(b) states that, “[a]n employer shall not require an employee to
6 work during a ... recovery period mandated pursuant to an applicable statute, or applicable regulation,
7 standard, or order of the Industrial Welfare Commission, the Occupational and Health Standards
8 Board, or the Division of Occupational Safety and Health.”

9 92. California Code of Regulations, Title 8, § 3395(d)(1) provides that, “[s]hade shall be
10 present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the
11 work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas
12 with shade at all times while employees are present that are either open to the air or provided with
13 ventilation or cooling The shade shall be located as close as practicable to the areas where the
14 employees are working.”

15 93. California Code of Regulations, Title 8, § 3395(d)(3) provides that, “[e]mployees shall
16 be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need
17 to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.
18 An individual employee who takes a preventative cool-down rest . . . shall not be ordered back to
19 work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in
20 addition to the time needed to access the shade.”

21 94. California Code of Regulations, Title 8, § 3395(i) provides that “[t]he employer shall
22 establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in
23 writing in both English and the language understood by the majority of the employees and shall be
24 made available at the worksite to employees and to representatives of the Division upon request.”

25 95. Defendants failed to make a heat illness prevention plan available at the worksite to
26 Plaintiffs and Class Members. Plaintiffs and the Class Members were subject to the same policies,
27 practices, and procedures governing the provision and scheduling of recovery periods. Defendants
28 have a policy of requiring Plaintiffs and Class Members to remain on duty at all times, and of not

1 providing them with compliant recovery periods when the outdoor temperature in the work area
2 exceeded 80 degrees Fahrenheit.

3 96. Labor Code § 226.7(d) requires employers, including Defendants, to provide to their
4 non-exempt employees, including Plaintiffs, paid recovery periods as mandated by California law.
5 Labor Code § 226.7(c) states that “[i]f an employer fails to provide an employee a . . . recovery period
6 in accordance with a state law, including, but not limited to, an applicable statute or applicable
7 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
8 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
9 the employee one additional hour of pay at the employee’s regular rate of compensation for each
10 work day that the . . . recovery period is not provided.”

11 97. Even though Plaintiffs and Class Members were not authorized and permitted to take
12 off-duty recovery periods, Defendants did not pay Plaintiffs and Class Members appropriate recovery
13 period premium wages for each day in which Defendants did not authorize and permit Plaintiffs and
14 Class Members to take compliant recovery periods, in violation of Labor Code § 226.7 and California
15 Code of Regulations, Title 8, § 3395(d).

16 98. On information and belief, Defendants have a common policy, pattern, and practice
17 of failing to compensate Plaintiff and Class Members with an hour of pay at their regular rate of pay
18 for the times that Plaintiffs and Class Members were not authorized to take recovery periods, in
19 violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d).

20 99. Plaintiffs and Class Members suffered and continue to suffer losses related to
21 Defendants’ failure to pay an additional hour of pay for each day a recovery period was not provided
22 and the associated use and enjoyment of compensation due and owing to them as a direct result of
23 Defendants’ Labor Code and California Code of Regulations, Title 8 violations.

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

26 **(AGAINST ALL DEFENDANTS)**

27 100. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 101. Labor Code 2802(a) states in pertinent part the following:

1 “(a) An employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions
4 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.”

5 102. As set forth above, Plaintiff and members of the Class must be compensated for all
6 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
7 personal cell phone bills incurred in their discharge of their duties. (See *Cochran v. Schwan’s Home*
8 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal
9 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.
10 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
11 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014
12 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on
13 Plaintiff’s cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943,
14 at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic
of *Cochran*).

15 103. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
16 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
17 applicable Wage Orders.

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** 20 **(AGAINST ALL DEFENDANTS)**

21 104. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 105. Labor Code 226(a) states in pertinent part the following:

23 “(a) An employer, semimonthly or at the time of each payment of wages, shall
24 furnish to his or her employee, either as a detachable part of the check, draft, or
25 voucher paying the employee’s wages, or separately if wages are paid by personal
26 check or cash, an accurate itemized statement in writing showing (1) gross wages
27 earned, (2) total hours worked by the employee, except as provided in subdivision
28 (j), (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

1 the employee is paid, (7) the name of the employee and only the last four digits of
2 his or her social security number or an employee identification number other than
3 a social security number, (8) the name and address of the legal entity that is the
4 employer, and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.”

6 106. As set forth above, during the Class Period, Defendants issued and continue to issue
7 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
8 which are inadequate under Labor Code Section 226(a).

9 107. As a result of Defendants failure to pay for all overtime and sick pay wages at the
10 appropriate legal rate, and missed meal and rest period premiums, Defendants failed to include
11 required information on Plaintiff and the Wage Statement Subclass’ wage statements, including, but
12 not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a).

13 108. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
14 and intentional.

15 109. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff
16 and members of the Wage Statement Subclass in violation of section 226(a) of the California
17 Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an
18 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
19 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
20 Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys’ fees.

21 **NINTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(AGAINST ALL DEFENDANTS)**

24 110. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 111. The actionable period for this cause of action is three years prior to the filing of this
26 Complaint through the present, and on-going until the violations are corrected, or the class is certified.

27 112. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
28 to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause of
action at or around the time that their employment is or was terminated or ended.

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

4 114. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
5 Penalty Subclass for all hours worked, including all overtime and sick pay wages, and their meal and
6 rest period premiums at the “regular rate of pay”, prior to or upon termination or separation from
7 employment with Defendants as required by Labor Code §§ 201 and 202.

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

12 **TENTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(AGAINST ALL DEFENDANTS)**

15 116. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 117. Defendants have engaged and continue to engage in unfair and/or unlawful business
17 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
18 failing to pay all wages in a timely manner, failure to pay overtime and sick time wages at the
19 appropriate legal rate, by failing to provide all legally required meal and rest periods or pay premium
20 payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate itemized wage
21 statements, by failing to reimburse employees for all necessary business expenses, and by failing to
22 pay all earned wages at the time of separation from employment.

23 118. Defendants’ utilization of these unfair and/or unlawful business practices deprived
24 Plaintiff and continue to deprive members of the Classes of compensation to which they are legally
25 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
26 Defendants’ competitors who have been and/or are currently employing workers and attempting to
27 do so in honest compliance with applicable wage and hour laws.

1 119. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
3 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
4 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

5 120. The acts complained of herein occurred within the last four years immediately
6 preceding the filing of the Complaint in this action.

7 121. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
9 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
10 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which
11 he is entitled to recover under Code of Civil Procedure § 1021.5.

12 **ELEVENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(Labor Code § 2698 *et seq.*)**

15 **(AGAINST ALL DEFENDANTS)**

16 122. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 123. Defendants have committed several Labor Code violations against Plaintiff and other
18 non-exempt employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
19 *et seq.*, acting on behalf of himself and other non-exempt employees, bring this representative action
20 against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
21 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
22 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
23 violation per employee per pay period for those violations of the Labor Code for which no civil
24 penalty is specifically provided based on the following Labor Code violations:

25 a. Failing to pay Plaintiff and other non-exempt employees in a timely manner and
26 failure to pay all overtime and sick time wages in violation of Labor Code §§ 204, 210, 510, 1194,
27 1197, 1198, and 1182.12;

b. Failing to provide Plaintiff and other non-exempt employees with all of their statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

c. Failing to authorize and permit Plaintiff and other non-exempt employees with all of their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in violation of Labor Code §§ 226.7, and 516;

d. Failing to reimburse Plaintiff and other non-exempt employees with recovery periods in violation of Labor Code § 226.7;

e. Failing to reimburse Plaintiff and other non-exempt employees for all necessary business expenditures in violation of Labor Code § 2802;

f. Failing to timely compensate Plaintiff and other non-exempt employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203; and

g. Failing to furnish Plaintiff and other non-exempt employees with complete, accurate, itemized wage statements in violations of Labor Code § 226(a);

124. On or about December 7, 2021, Plaintiff notified International Paving Services, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in Paragraph 123 (a)-(g). Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

125. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and the interests of other non-exempt employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

- 1 1. For an order certifying the proposed Classes;
- 2 2. For an order appointing Plaintiff as representative of the Classes;
- 3 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 4 4. Upon the First Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 204 and 210;
- 6 5. Upon the Second Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 8 6. Upon the Third Cause of Action, for compensatory, consequential, general
9 and special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
10 1198, 1199;
- 11 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
12 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 13 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 15 9. Upon the Sixth Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7;
- 17 10. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 2208, and
18 reasonable costs and attorneys' fees;
- 19 11. Upon the Eighth Cause of Action, penalties pursuant to Labor Code § 226(a), and
20 reasonable costs and attorneys' fees;
- 21 12. Upon the Ninth Cause of Action, for statutory waiting time penalties pursuant to
22 Labor Code §§ 201-203.
- 23 13. Upon the Tenth Cause of Action, for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 26 14. Upon the Eleventh Cause of Action, for civil penalties due to Plaintiff, other non-
27 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
28 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each

1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided under the Labor Code.

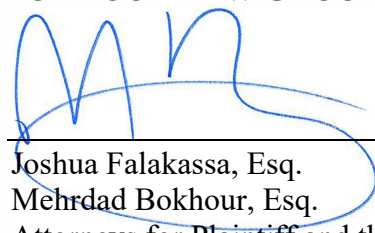
3 15. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
4 § 218.6 and Civil Code §§ 3287 and 3289;

5 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
6 218.5, 226, and Code of Civil Procedure § 1021.5; and

7 17. For such other relief that the Court may deem just and proper.

8 Dated: March 17, 2023

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

9
10
11 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes

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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 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.

On March 28, 2023, I served the following document(s) described as **SECOND AMENDED CLASS ACTION AND PAGA COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

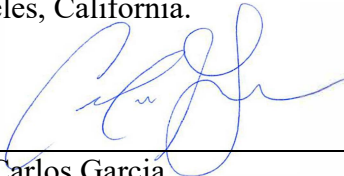
Roxanne Wilson, Esq.
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ARENT FOX
555 West Fifth Street, 48th Floor
Los Angeles, California 90013

**Counsel for defendant International
Paving Services, Inc.**

BY ELECTRONIC MAIL: Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

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

Executed on March 28, 2023, at Los Angeles, California.



Carlos Garcia