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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF YOLO**

CV2022-0220

12 DILLON MURRAY, as an individual, on behalf
13 of himself and all others similarly situated,

14 Plaintiff,

15 v.

16 ONSITE MEDICAL SERVICE, INC., a
California corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No.: _____

CLASS AND REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES, PENALTIES,
RESTITUTION AND INJUNCTIVE RELIEF:**

- 1) **FAILURE TO PAY ALL MINIMUM,
REGULAR, AND/OR OVERTIME
WAGES**
(Labor Code §§ 223, 225.5, 510, 558, 1194,
1194.2, 1197, 1197.1, and 1198);
- 2) **FAILURE TO PROVIDE COMPLAINT
MEAL PERIODS AND/OR AUTHORIZE
AND PERMIT REST PERIODS**
(Labor Code §§ 226.7, 512, 558, and 1198);
- 3) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS EXPENSES**
(Labor Code § 2802);
- 4) **FAILURE TO MAINTAIN ACCURATE
RECORDS**
(Labor Code §§ 1174, 1174.5, and 1198);
- 5) **FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, 246, 248.5, and
1198);

- 6) **FAILURE TO TIMELY PAY ALL WAGES DUE DURING AND UPON SEPARATION OF EMPLOYMENT (Labor Code §§ 201-204, 210, 1194, 1194.2, and 1198);**
- 7) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (Bus. & Prof. Code §§ 17200, *et seq.*); and**
- 8) **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT (Labor Code §§ 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

Plaintiff Dillon Murray ("Plaintiff") brings this class and representative action on behalf of himself and all persons similarly situated against Defendant OnSite Medical Service, Inc. and DOES 1 through 50, inclusive (collectively, "OnSite" or "Defendants"), on the following grounds:

INTRODUCTION

1. This class and representative action is brought by Plaintiff on behalf of himself and all other current and former non-exempt employees of OnSite who performed work in California during the relevant time period (referred to herein as "OnSite Employees").

2. Plaintiff asserts that during the relevant time period, OnSite engaged in a common pattern and practice of wage and hour violations under the California Labor Code ("Labor Code") and California Industrial Welfare Commission's ("IWC") Wage Order No. 4-2001 to decrease its employment related costs and increase its profits by, among other things:

- a. Failing to compensate for all hours actually worked, including minimum, regular, and/or overtime wages;
- b. Failing to provide the opportunity to take legally compliant meal periods and/or pay premium wages for non-compliant meal periods;
- c. Failing to authorize and permit legally compliant rest periods and/or pay premium wages for non-compliant rest periods;

- d. Failing to reimburse for necessary business expenses;
- e. Failing to maintain accurate records;
- f. Failing to furnish accurate itemized wage statements;
- g. Failing to timely pay all wages due during and upon separation of employment and/or the required waiting time penalties;
- h. Engaging in unlawful, unfair and/or fraudulent business practices; and
- i. Violating the Private Attorneys General Act of 2004 ("PAGA").

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, penalties, restitution, and injunctive relief, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10. Pursuant to Code of Civil Procedure § 382, California Business and Professions Code ("Business & Professions Code") § 17203, and Labor Code §§ 2698, *et seq.*, Plaintiff brings this action on behalf of himself and all other OnSite Employees.

6. This Court has personal jurisdiction over OnSite because OnSite conducts business in the state of California and has caused injuries in the county of Yolo, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and Business & Professions Code.

7. Venue as to OnSite is proper in this judicial district pursuant to Code of Civil Procedure § 395(a). OnSite has its headquarters and transacts business in Yolo County and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other OnSite Employees within the county of Yolo and throughout the state of California.

8. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

THE PARTIES

I. PLAINTIFF

9. Plaintiff Dillon Murray at all material times mentioned herein:

- a. Was and is a resident of Yolo County in the state of California;
- b. Was employed by OnSite from approximately November 20, 2018 to September 8, 2021;
- c. Performed work for OnSite as an Emergency Medical Technician throughout Yolo County, California;
- d. Earned an hourly wage;
- e. Was to be paid on a bi-weekly basis;
- f. Was scheduled to work twelve (12) hour shifts;
- g. Was typically scheduled to work thirty (30) to forty (40) hours per week;
- h. Was classified by OnSite as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- i. Was not timely compensated minimum, regular, and/or overtime wages for all time worked or spent under the control of OnSite;
- j. Was not provided with the opportunity to take legally compliant meal periods and/or paid meal period premium wages;
- k. Was not authorized and permitted to take legally compliant rest periods and/or paid rest period premium wages;
- l. Was not reimbursed for all necessary business expenses he incurred in the discharge of his job duties, including costs incurred using his personal cell phone to complete work tasks;
- m. Contends his employee and/or payroll records were not accurately maintained by OnSite;

- n. Was not furnished with accurate itemized wage statements;
- o. Was not provided with written notice of accrued and used sick hours;
- p. Was not timely paid all wages due during and upon separation of employment;
- q. Was not paid the required waiting time penalties for late payment of final wages;
- r. Was subject to OnSite's unlawful, unfair, and fraudulent business practices;
- s. Is a member of the class and sub-class defined herein;
- t. Is an "aggrieved employee" as defined by Labor Code § 2699(c); and
- u. Has complied with all requirements outlined in Labor Code §§ 2698, *et seq.*

II. DEFENDANTS

10. Defendant OnSite Medical Service, Inc. ("OnSite") is a California corporation with its headquarters located in Davis, California. OnSite provides on-site emergency standby services for private parties, processing plants, sporting events, night clubs, and other businesses and locations throughout California. In addition, OnSite is an EMT-B Training Center and Continued Education Provider in Yolo County, offering courses and certifications approved by the American Heart Association and the California Bureau for Private Postsecondary Education.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

12. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendant are also alleged to have been done and/or caused by each fictitiously named defendant, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

13. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

14. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things alleged herein, acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

15. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

16. At all times mentioned herein there was a unity of interest and ownership between each named defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other OnSite Employees.

17. At all times mentioned herein, each named defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other OnSite Employees including, but not limited to, implementing standard policies and procedures.

FACTUAL ALLEGATIONS

18. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

19. Plaintiff was employed by, or otherwise performed work for, OnSite from approximately November 20, 2018 to September 8, 2021. During his employment, Plaintiff performed work as an Emergency Medical Technician (“EMT”) at a processing plant in Dixon, California and other private events and businesses. Plaintiff’s job duties included, but were not limited to, responding to emergency situations and providing medical care to the employees of the processing plant and patrons of private events.

1 20. During his employment, Plaintiff was classified by OnSite as a non-exempt employee,
2 earned an hourly rate of \$18.00 per hour, and was to be paid on a bi-weekly basis. Plaintiff was scheduled
3 to work twelve (12) hour shifts starting at 7:00 a.m. or 7:00 p.m., and typically worked thirty (30) to forty
4 (40) or more hours per week.

5 21. Plaintiff asserts that OnSite has employed, and will continue to employ, several individuals
6 in a non-exempt capacity in Yolo County and throughout the state of California.

7 22. Plaintiff further alleges that throughout the relevant time period all OnSite Employees
8 earned an hourly wage, were to be paid on a bi-weekly basis, and worked at least eight (8) hours per day
9 and/or forty (40) hours per week.

10 23. Plaintiff contends that he and all other OnSite Employees were subject to, and those
11 currently employed continue to be subject to, the same and/or similar policies, practices, procedures,
12 guidelines, and/or culture described herein.

13 24. Plaintiff further asserts that he and all other OnSite Employees have suffered, and those
14 currently employed will continue to suffer, the same and/or similar violations of law described herein.

15 25. Plaintiff alleges that OnSite had, and continues to have, a policy, practice, procedure,
16 guideline, and/or culture of not paying OnSite Employees all minimum, regular and/or overtime wages
17 for all time engaged in work on behalf of OnSite. For instance, Plaintiff contends OnSite failed to
18 compensate OnSite Employees, including himself, for work performed while off-the-clock. Specifically,
19 OnSite implemented a written policy requiring Plaintiff and other OnSite Employees to arrive ten (10) to
20 fifteen (15) minutes prior to the start of their scheduled shifts, but did not compensate OnSite Employees
21 for this time. In addition, Plaintiff and other OnSite Employees were required to perform other work duties
22 prior to clocking in for their shifts, such as restocking supplies for the processing plant, as well as picking
23 up and dropping off gear at OnSite's facilities. OnSite Employees, including Plaintiff, were also obligated
24 to coordinate carpooling and gear management with co-workers, via text message and telephone calls,
25 while off-the-clock. Plaintiff further contends that he and other OnSite Employees were mandated by
26 OnSite to work during their meal periods. However, OnSite improperly considered the work that Plaintiff
27 and other OnSite Employees performed while off-the-clock as non-compensable time and failed to provide
28 any remuneration.

26. Plaintiff further alleges that OnSite did not record Plaintiff's or other OnSite Employees' actual clock-in and clock-out times. Rather, Plaintiff and other OnSite Employees would text their supervisor when they arrived at their assigned location in order to "clock in," and would be "clocked out" by their supervisor when the next scheduled employee texted their arrival. Once the next employee arrived at the assigned location, Plaintiff and other OnSite Employees were required to provide the employee with a shift debriefing and complete a facility walk-through if the employee had not been assigned to that location before. Because Plaintiff and other OnSite Employees were "clocked out" when the next scheduled employee arrived, OnSite Employees were not compensated for time completing shift debriefings and/or facility walk-throughs. Thus, Plaintiff and other OnSite Employees were not paid all minimum, regular, and/or overtime wages owed to them for all time spent performing work for OnSite.

27. Plaintiff contends that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to pay all overtime wages owed to Plaintiff and other OnSite Employees who worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek. For instance, Plaintiff was not compensated one-and-one-half (1.5) times his regular rate of pay for all overtime hours. Instead, OnSite improperly limited Plaintiff's overtime compensation to hours worked in excess of twelve (12) in a single workday or eighty (80) in the bi-weekly pay period. Thus, Plaintiff and, on information and belief, other OnSite Employees were not compensated all overtime wages for shifts between eight (8) hours and twelve (12) hours or for working more than forty (40) hours in a single workweek.

28. Plaintiff alleges that OnSite did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing OnSite Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work when they worked five (5) or more hours in a day. Similarly, Plaintiff contends that OnSite did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing OnSite Employees with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they worked more than ten (10) hours in a day.

29. Plaintiff alleges that he and other OnSite Employees were not provided with the opportunity to take lawful meal periods because OnSite Employees were required to remain "on-call," carry and keep their radios turned on, and be readily available to respond to medical situations at all times

1 during their meal periods. Plaintiff further alleges that OnSite required him and other OnSite Employees
2 to work alone during their shifts, and as a result, they did not have an employee available to relieve them
3 of their work duties during their meal periods. Consequently, Plaintiff and other OnSite Employees
4 regularly received meal periods that were not free from OnSite's control, interrupted by work duties and/or
5 less than thirty (30) minutes in length, or were forced to miss or forgo their meal periods altogether. For
6 instance, Plaintiff did not receive any uninterrupted meal periods at any point during his 12-hour shifts,
7 and was frequently forced to end his meal periods prematurely in order to respond to a medical situation
8 at the job site.

9 30. Plaintiff asserts that he and other OnSite Employees did not sign a valid on-duty meal
10 period agreement at any point during their employment with OnSite, nor did they properly waive any of
11 their meal periods.

12 31. Plaintiff further alleges that OnSite did not, and does not, have a policy, practice,
13 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other OnSite Employees
14 to take uninterrupted, off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or
15 major fraction thereof. For the same reasons Plaintiff and other OnSite Employees were not provided with
16 lawful meal periods, as set forth above, Plaintiff and other OnSite Employees were not authorized or
17 permitted to take lawful rest periods.

18 32. Plaintiff contends that OnSite knew or should have known that Plaintiff and other OnSite
19 Employees were not provided with the opportunity to take legally compliant meal and rest periods because
20 OnSite instructed Plaintiff and other OnSite Employees to remain on-duty during their meal and rest
21 periods, and because OnSite required OnSite Employees, including Plaintiff, to work alone during their
22 shifts, thereby failing to relieve OnSite Employees of all work duties during their meal and rest periods.

23 33. Plaintiff further alleges that OnSite did not, and does not, have a policy, practice,
24 procedure, guideline, and/or culture of paying premium wages to Plaintiff and other OnSite Employees
25 for all meal and rest periods that do not comply with California law.

26 34. Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure,
27 guideline, and/or culture of failing to reimburse OnSite Employees, including Plaintiff, for all necessary
28 business expenses that were incurred in the discharge of their job duties. For example, OnSite required

1 Plaintiff and other OnSite Employees to use their personal cell phones to text their supervisors when they
2 arrived at the jobsite in order to “clock in”; to coordinate carpooling with co-workers and determine who
3 would be picking up or dropping off gear; to use as a radio if none was provided; and to manage their
4 shifts via the “When to Work” mobile application. Moreover, Plaintiff and other OnSite Employees were
5 obligated to use their personal vehicles to travel to private events and pick up and drop off gear at OnSite’s
6 facilities. Despite the requirement that OnSite Employees use their personal cell phones for work
7 purposes, Plaintiff and other OnSite Employees did not receive any reimbursement for these expenses
8 from OnSite. In addition, OnSite did not reimburse OnSite Employees the full amount of expenses
9 incurred in using their personal vehicles for work-related purposes. For instance, OnSite’s written policies
10 provided that OnSite Employees were to be reimbursed a maximum of \$0.25 per mile, which did not fully
11 reimburse OnSite Employees for their actual expenses.

12 35. As a result of OnSite’s policies, practices, procedures, guidelines, and/or culture described
13 herein including, but not limited to, failing to compensate OnSite Employees all minimum, regular, and/or
14 overtime wages, failing to provide legally compliant meal periods or premium wages in lieu thereof, and
15 failing to record OnSite Employees’ actual clock-in and clock-out times, OnSite knowingly and
16 intentionally failed to maintain accurate employee and payroll records reflecting OnSite Employees’
17 actual time worked, the proper beginning and end of each work period, the meal periods, the total hours
18 worked during the pay period, and the applicable rates of pay, among other things, as required by
19 California law.

20 36. Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure,
21 guideline, and/or culture of furnishing wage statements to OnSite Employees that do not accurately reflect
22 the items required by Labor Code § 226(a) including, but not limited to, the address of the legal entity that
23 is the employer, the total hours worked by the employee during the pay period, all applicable hourly rates
24 in effect during the pay period, the corresponding number of hours worked at each hourly rate by the
25 employee, and the actual gross and net wages earned. Plaintiff also alleges that the wage statements
26 furnished to him and other OnSite Employees failed to provide written notice of accrued and used sick
27 leave hours.

28 37. Due to the missing and/or incorrect information on the furnished wage statements, Plaintiff

1 and other OnSite Employees were unable to promptly and easily determine the total number of hours
2 actually worked, the applicable hourly rates in effect during the pay period, the corresponding number of
3 hours worked at each hourly rate, and/or the amount of paid sick leave available, among other things.

4 38. Plaintiff alleges that, as described herein, OnSite had, and continues to have, a policy,
5 practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, overtime,
6 and/or premium wages earned by OnSite Employees, including Plaintiff, on the days designated in
7 advance by OnSite as regular pay days. Moreover, OnSite did not, and does not, have a policy, practice,
8 procedure, guideline, and/or culture of timely paying Plaintiff and other OnSite Employees all earned
9 overtime wages on the payday for the next regular payroll period.

10 39. Plaintiff further alleges that OnSite had, and continues to have, a policy, practice,
11 procedure, guideline, and/or culture of willfully failing to pay former OnSite Employees, such as himself,
12 all wages due and owing upon separation of employment and/or the required waiting time penalties for
13 the late payment of such wages. For instance, despite separating from his employment with OnSite on
14 September 8, 2021, OnSite did not provide Plaintiff with his final wages within the statutorily mandated
15 time period. Rather, OnSite conditioned payment of Plaintiff's final paycheck on Plaintiff completing
16 paperwork and additional tasks, and refused to provide payment until Plaintiff notified OnSite that he
17 would be filing a claim with the Labor Board. Plaintiff's final payment did not include all of his wages
18 due and owing, including all unpaid minimum, regular, overtime, and/or premium wages, nor did it include
19 any waiting time penalties. Plaintiff further alleges, based on information and belief, that other former
20 OnSite Employees were not timely paid all wages due and owing upon separation of employment and/or
21 paid the required waiting time penalties, in large part due to OnSite's policy, practice, procedure,
22 guideline, and/or culture of failing to properly pay all minimum, regular, overtime and/or premium wages.

23 40. On December 7, 2021, Plaintiff submitted written notice to the California Labor and
24 Workforce Development Agency ("LWDA") and OnSite as required by the Private Attorneys General
25 Act of 2004 ("PAGA") informing them of OnSite's alleged violations of the Labor Code. A true and
26 correct copy of the December 7, 2021 written notice is attached hereto as **Exhibit 1** and incorporated
27 herein by reference.

28 41. According to Labor Code § 2699.3, the LWDA had sixty-five (65) days from the date of

1 submission to notify the parties of whether it intends to investigate the alleged violations. To date, the
2 LWDA has not informed Plaintiff that it intends to investigate Plaintiff's allegations. Thus, pursuant to
3 the PAGA, Plaintiff has the right to pursue, and does so pursue, the asserted claims in a representative
4 action in his representative capacity on behalf of himself, all other OnSite Employees, the general public,
5 and the state of California as permitted by Labor Code § 2699.3.

6 42. Plaintiff further believes that additional violations may be discovered and therefore
7 reserves his right to allege additional violations of law as investigation and discovery warrants. In the
8 event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as
9 necessary.

10 **CLASS DEFINITIONS**

11 43. Plaintiff seeks to represent the following Class and Sub-Class, which are defined as
12 follows:

13 **The Non-Exempt Class:**

14 All current and former non-exempt employees of Defendants in California
15 during the period commencing on the date that is within four years prior to
16 the filing of the Complaint through and including the last date of trial
17 (hereinafter the "Class Period"). To the extent that California Rules of
18 Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to
19 toll the claims by the Class against Defendants, the time period should be
20 adjusted accordingly.

21 **The Non-Exempt Waiting Time Penalties Sub-Class:**

22 All former non-exempt employees of Defendants in California during the
23 period commencing on the date that is within three years prior to the filing
24 of the Complaint through and including the last date of trial. To the extent
25 that California Rules of Court, Appendix I, Emergency Rule 9 and/or
26 equitable tolling operates to toll the claims by the Sub-Class against
27 Defendants, the time period should be adjusted accordingly.

28 44. Members of the Class and/or Sub-Class are all "employees" as the term is used in the Labor
Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

45. A more precise definition of the Class and/or Sub-Class may be determined after further
investigation and discovery. Plaintiff reserves his right to redefine the Class and/or Sub-Class and/or create
additional classes and/or sub-classes at any time prior to the court's order on Plaintiff's class certification
motion as provided by law. (Cal. Rules Ct., R. 3.765(b).)

CLASS ALLEGATIONS

46. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

47. Plaintiff brings this action on behalf of himself and on behalf of all persons within the Class and/or Sub-Class defined herein.

48. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code of Civil Procedure § 382 and California Civil Code (“Civil Code”) § 1781, in that:

- a. The persons who comprise the Class and/or Sub-Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and/or Sub-Class and will apply uniformly to every member of the Class and/or Sub-Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;
- c. The parties opposing the Class and/or Sub-Class have acted or have refused to act on grounds generally applicable to the Class and/or Sub-Class, thereby making final injunctive relief or declaratory relief appropriate with respect to the Class and/or Sub-Class as a whole; and
- d. Common questions of law and fact exist as to the members of the Class and/or Sub-Class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of Class members and/or Sub-Class members in individually controlling the prosecution or defense of separate actions;
 - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and/or Sub-Class;
 - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and

iv. The likely difficulties in the managing of a class action.

49. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure § 382 and Civil Code § 1781 because:

- a. Questions of law and fact common to the Class and/or Sub-Class are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of Class members' and/or Sub-Class members' claims;
- c. The members of the Class and/or Sub-Class are so numerous that it is impractical to bring all class members before the Court;
- d. Plaintiff's claims are typical of the claims of the Class and/or Sub-Class;
- e. Class members and/or Sub-Class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Class and/or Sub-Class;
- g. Plaintiff can fairly and adequately protect the interests of the Class and/or Sub-Class;
- h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the Class and/or Sub-Class for the injuries sustained; and
- i. Defendants have acted or refused to act on grounds generally applicable to the Class and/or Sub-Class, thereby making final injunctive relief appropriate with respect to the Class and/or Sub-Class as a whole.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)

FAILURE TO PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

[Labor Code §§ 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of IWC Wage Order No. 4-2001]

50. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

51. Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

52. Labor Code § 1198 mandates:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

53. The “Minimum Wages” section of IWC Wage Order No. 4-2001 also states that, “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

54. Codifying an employee’s right to overtime compensation, Labor Code § 510 provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

55. The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 4-2001 mandate the same requirements as Labor Code § 510.

56. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

57. Labor Code § 223 provides, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

58. For violations of Labor Code § 223, Labor Code § 225.5 imposes a civil penalty of \$100 for any initial violation and \$200 plus 25% of the amount unlawfully withheld for each subsequent violation or any willful or intentional violation, in addition to any other penalty.

59. Labor Code § 1194(a) mandates:

...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

60. Labor Code § 1197.1 further provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

61. For actions brought under Labor Code § 1194 or 1197.1, Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

62. Labor Code § 558 provides that, “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages for any initial violation, and \$100 for each underpaid

employee for each pay period for which the employee was underpaid for each subsequent violation in addition to an amount sufficient to recover unpaid wages.

63. Plaintiff alleges that he and other OnSite Employees regularly worked at least eight (8) hours per day and/or forty (40) hours per week during the relevant time period, earned an hourly wage, and were to be paid on a bi-weekly basis.

64. Plaintiff alleges that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not compensating him and all other OnSite Employees all minimum, regular, and/or overtime wages for all the time engaged in work on behalf of OnSite. For example, Plaintiff and other OnSite Employees were instructed by OnSite to arrive to the job site ten (10) to fifteen (15) minutes prior to the start of their scheduled shift but were not compensated for this time. In addition, Plaintiff and other OnSite Employees were required to perform work duties before clocking in and/or after clocking out for their shifts, such as restocking supplies, completing shift pass-downs, and dropping off and/or picking up gear from OnSite's facilities. OnSite Employees, including Plaintiff, were also required to coordinate carpooling and gear assignments with other co-workers, via text message and phone calls, while off-the-clock. Moreover, Plaintiff and other OnSite Employees worked through their meal periods. OnSite improperly considered the work that Plaintiff and other OnSite Employees performed while off-the-clock as non-compensable time and failed to provide any remuneration.

65. Additionally, Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of improperly calculating overtime wages owed to OnSite Employees. For instance, OnSite did not compensate Plaintiff and other OnSite Employees one-and-one-half (1.5) times their regular rate of pay for work in excess of eight (8) hours in a single workday and/or forty (40) hours in a workweek. Instead, OnSite only compensated Plaintiff and other OnSite Employees overtime wages when they worked more than eighty (80) hours in the bi-weekly pay period and/or twelve (12) or more hours in a workday. Consequently, OnSite failed to pay Plaintiff and all other Onsite Employees all overtime wages owed to them.

66. By virtue of OnSite's unlawful failure to compensate Plaintiff and other OnSite Employees minimum, regular, and/or overtime wages for all of their time actually worked, OnSite Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed

the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

67. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiff and other OnSite Employees are entitled to, and now seek to recover, all wages and penalties owed including, but not limited to, penalties and liquidated damages available under Labor Code §§ 225.5, 558, 1194.2, and 1197.1, as well as interest and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 1194, and Code of Civil Procedure § 1021.5.

68. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as described in the below prayer.

SECOND CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)

FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR AUTHORIZE AND PERMIT REST PERIODS

[Labor Code §§ 226.7, 512, 558, 1198 and the "Meal Periods" and "Rest Periods" Sections of IWC Wage Order No. 4-2001]

69. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

70. Labor Code § 512(a) mandates:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

71. The "Meal Periods" section of IWC Wage Order No. 4-2001 provides, in pertinent part:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be

permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

72. A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at 1040 [internal citations omitted].)

73. The "Rest Periods" section of IWC Wage Order No. 4-2001 provides,

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

74. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

75. Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code § 226.7(c) further provides,

If an employer fails to provide an employee a meal or rest or recovery period

in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

76. Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

77. Labor Code § 1198 mandates:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

78. Plaintiff alleges that OnSite did not, and does not, have a policy, practice, procedure, guideline, and/or culture of providing all OnSite Employees with the opportunity to take a thirty (30) minute, uninterrupted, off-duty meal period before the end of their fifth (5th) hour of work when they worked five (5) or more hours in a day, and/or the opportunity to take a second thirty (30) minute, uninterrupted, off-duty meal period when they worked more than ten (10) hours in a day.

79. Plaintiff alleges that he and other OnSite Employees did not receive lawful meal periods due to OnSite's policy, practice, procedure, guideline, and/or culture of requiring OnSite Employees to be "on-call" and readily available to respond to emergency situations at all times during their meal periods. For example, Plaintiff was often forced to end his meal periods prematurely in order to respond to an emergency situation that arose. Moreover, OnSite failed to provide adequate coverage for OnSite Employees to take legally compliant meal periods because OnSite required Plaintiff and other OnSite Employees to work alone during their shifts. As a result, Plaintiff and other OnSite Employees were regularly required to work through their meal periods, experienced short and/or interrupted meal periods, and/or were not provided with any meal periods at all.

80. Plaintiff contends that OnSite Employees, including himself, did not sign a valid on-duty meal period agreement at any point during their employment with OnSite, nor did they properly waive

1 any of their meal periods.

2 81. Plaintiff further alleges OnSite did not, and does not, have a policy, practice, procedure,
3 guideline, and/or culture of authorizing and permitting Plaintiff and other OnSite Employees to take a ten
4 (10) minute, uninterrupted, off-duty rest period for every four (4) hours worked or major fraction thereof.
5 Rather, Plaintiff and other OnSite Employees were required to be “on-call” and respond to medical
6 situations at the worksite throughout their rest periods. Plaintiff further contends that OnSite did not
7 provide relief so that OnSite Employees, including himself, could take legally compliant rest periods.
8 Consequently, Plaintiff and other OnSite Employees received rest periods that were not free from OnSite’s
9 control, interrupted by work duties, and/or less than ten (10) minutes in length. Additionally, Plaintiff and
10 other OnSite Employees, frequently missed, or were otherwise compelled to forgo, their rest periods.

11 82. Plaintiff contends that OnSite knew or should have known that Plaintiff and other OnSite
12 Employees were not provided with the opportunity to take legally compliant meal and/or rest periods,
13 because OnSite required OnSite Employees to be on-duty throughout their shifts, including during their
14 meal and rest periods, and because OnSite failed to provide OnSite Employees with coverage so that they
15 could be relieved for their meal and rest periods.

16 83. Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure,
17 guideline, and/or culture of not timely paying the required premium wages for each workday a lawful
18 meal and/or rest period was not provided. Plaintiff contends that although he and other OnSite Employees
19 were not provided with legally compliant meal and rest periods, OnSite did not pay Plaintiff and other
20 OnSite Employees premium wages for unlawful meal and rest periods.

21 84. Due to OnSite’s unlawful conduct, Plaintiff and other OnSite Employees have suffered,
22 and will continue to suffer, damages in an amount which is presently unknown, but which exceeds the
23 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

24 85. According to Labor Code § 226.7(c) and IWC Order No. 4-2001, Plaintiff and other OnSite
25 Employees are entitled to, and now seek to recover, the full amount of unpaid premium wages for unlawful
26 meal and rest periods.

27 86. Pursuant to Labor Code § 218.6, Plaintiff and other OnSite Employees are entitled to, and
28 now seek to recover, prejudgment interest on the amount of premium wages owed.

87. Plaintiff, on behalf of himself and all other OnSite Employees, is entitled to and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

88. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as described in the below prayer.

THIRD CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

[Labor Code § 2802]

89. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

90. Labor Code § 2802(a) provides, in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

91. Labor Code § 2802(b) further provides, "[a]ll awards made by a court ... for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss."

92. Furthermore, Labor Code § 2802(c) states, "[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

93. As stated by the California Supreme Court, "a mileage rate for automobile expense reimbursement may be a subject of negotiation and agreement between employer and employee. Under [Labor Code] section 2804, however, any agreement made by the employee is null and void insofar as it waives the employee's rights to full expense reimbursement under section 2802." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 569-570.)

94. Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of requiring OnSite Employees, including Plaintiff, to use their personal cell

1 phones in the discharge of their job duties including, but not limited to, clocking in for work,
2 communicating with their co-workers regarding work-related issues, and using their cell phones in lieu of
3 a radio. For instance, Plaintiff was required to text his supervisor when he arrived at the worksite in order
4 to clock in for his shift. Plaintiff contends that OnSite failed to reimburse him and other OnSite Employees
5 a reasonable percentage of their personal cellular bill as required by California law.

6 95. Plaintiff further alleges that he and other OnSite Employees were required to use their
7 personal vehicles for work-related purposes. Specifically, Plaintiff and other OnSite Employees were
8 required to use their personal vehicle to travel to private events and pick up and drop off gear at OnSite's
9 facilities. However, OnSite did not have a policy, practice, procedure, guideline, and/or culture of fully
10 reimbursing Plaintiff and other OnSite Employees for mileage in violation of California law.

11 96. Plaintiff and other OnSite Employees are entitled to, and now seek to recover,
12 reimbursement of their necessary expenditures, plus interest on the applicable amount, pursuant to Labor
13 Code § 2802(b).

14 97. Plaintiff and other OnSite Employees are also entitled to and therefore seek recovery of
15 reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 2802(c) and Code of Civil
16 Procedure § 1021.5.

17 98. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as
18 described in the below prayer.

19 **FOURTH CAUSE OF ACTION**

20 **(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)**

21 **FAILURE TO MAINTAIN ACCURATE RECORDS**

22 **[Labor Code §§ 1174, 1174.5, 1198 and the "Records" Section of**
23 **IWC Wage Order No. 4-2001]**

24 99. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
25 paragraphs of this Complaint.

26 100. Labor Code § 1174(c) requires every employer to "keep a recording showing the names
27 and addresses of all employees employed..."

28 101. Labor Code § 1174(d) further requires every employer to:

[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. ...

102. The "Records" section of IWC Wage Order No. 4-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each meal period, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

103. Labor Code § 1198 mandates:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

104. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to any other penalty.

105. Plaintiff contends that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate payroll and/or employee records that properly show, among other things, the total number of hours actually worked by OnSite Employees, the proper beginning and end of each work period, the actual beginning and end of each meal period, all earned wages, and all wages paid to Plaintiff and other OnSite Employees.

106. Plaintiff and other OnSite Employees have suffered, and continue to suffer, injuries and damages as a consequence of OnSite's deliberate failure to maintain accurate records as required by the Labor Code. Specifically, Plaintiff and other OnSite Employees were denied their legal right and protected interest in having accurate and complete payroll and employment records available to them.

107. Plaintiff and other OnSite Employees are entitled to, and now seek damages and penalties, as outlined in Labor Code § 1174.5.

108. Plaintiff, on behalf of himself and all other OnSite Employees, is entitled to, and seeks to recover reasonable attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5.

109. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as

described in the below prayer.

FIFTH CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code §§ 226, 226.3, 246, 248.5, and 1198]

110. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

111. Labor Code § 226(a) states, in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (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 only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

112. Labor Code § 246(i) provides the following:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

113. Labor Code § 226(e)(1) further mandates:

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

114. An employee suffers injury where the employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
2 rate.” (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

3 115. Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily determine” means
4 that “a reasonable person would be able to readily ascertain the information without reference to
5 documents or information.”

6 116. According to Labor Code § 226(h), “an employee may also bring an action for injunctive
7 relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’
8 fees.”

9 117. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250 per
10 employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each
11 violation in a subsequent violation.

12 118. For violations of Labor Code § 246, Labor Code § 248.5(e) imposes a penalty “not to
13 exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of
14 fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day
15 or portion thereof that the violation occurred or continued...”

16 119. Labor Code § 248.5(e) further provides that any person enforcing Labor Code § 246 on
17 behalf of the public is entitled to “equitable, injunctive, or restitutionary relief, and reasonable attorney’s
18 fees and costs.”

19 120. Plaintiff asserts that OnSite had, and continues to have, a policy, practice, procedure,
20 guideline, and/or culture of furnishing OnSite Employees, including Plaintiff, with wage statements that
21 do not comply with California law. Plaintiff contends that the wage statements furnished to him and other
22 OnSite Employees did not include, for instance, the address of the legal entity that is the employer, the
23 total hours worked by the employee during the pay period, all applicable hourly rates in effect during the
24 pay period, the corresponding number of hours worked at each hourly rate by the employee, and the actual
25 gross and net wages earned. In addition, the wage statements furnished to OnSite Employees, including
26 Plaintiff, did not provide written notice setting forth the amount of paid sick leave available.

27 121. Plaintiff further alleges the wage statements furnished to OnSite Employees were
28 inaccurate. The wage statements, for example, did not include all applicable hourly rates that were actually

1 in effect during the pay period, the corresponding number of hours actually worked at each hourly rate by
2 the employee, and the actual gross and/or net wages earned and paid. Plaintiff alleges that the inaccuracies
3 were largely due to OnSite's failure to appropriately pay minimum, regular, and/or overtime wages, as
4 well as meal and/or rest period premiums. Additionally, OnSite's unlawful practice of clocking OnSite
5 Employees out for their shifts based on the time that the next employee arrived at the worksite resulted in
6 inaccurate wage statements.

7 122. Due to the incorrect information on their furnished wage statements, Plaintiff and other
8 OnSite Employees were unable to promptly and easily determine the total number of hours worked, the
9 applicable hourly rates in effect during the pay period, and/or the corresponding number of hours worked
10 at each hourly rate, among other things.

11 123. Plaintiff and other OnSite Employees are entitled to, and now seek to recover, civil
12 penalties pursuant to Labor Code §§ 226.3 and 248.5(e) for violations of Labor Code §§ 226(a) and 246.

13 124. Plaintiff and other OnSite Employees are also entitled to and seek recovery of liquidated
14 damages as provided by Labor Code § 226(e).

15 125. Furthermore, pursuant to Labor Code § 226(h), Plaintiff and all other OnSite Employees
16 are entitled to, and therefore seek injunctive relief in order to ensure that OnSite complies with Labor
17 Code § 226.

18 126. Plaintiff and other OnSite Employees are further entitled to, and seek recovery of
19 reasonable attorneys' fees and costs as provided under Labor Code §§ 226(e)(1), 226(h), and 248.5(e) and
20 Code of Civil Procedure § 1021.5.

21 127. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as
22 described in the below prayer.

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SIXTH CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Sub-Class, Against OnSite and Does 1-50)

FAILURE TO TIMELY PAY ALL WAGES DUE DURING

AND UPON SEPARATION OF EMPLOYMENT

**[Labor Code §§ 201-204, 210, 1194, 1194.2, 1198, and the “Minimum Wages” Section of
IWC Wage Order No. 4-2001]**

128. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

129. Labor Code § 204 provides that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. (Labor Code § 204(a).) Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Thus, Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work.

130. Premium wages under Labor Code § 226.7 are wages that must be timely paid to employees pursuant to Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

131. Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

132. The “Minimum Wages” section of IWC Wage Order No. 4-2001 further states that, “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period” (Emphasis added.)

133. Pursuant to Labor Code § 201(a), when an employer discharges an employee, all earned wages that remain unpaid at the time of discharge are due and payable immediately.

134. Labor Code § 202(a) provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

135. Labor Code § 203(a) further states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, ... 202 ..., any wages of an employee who is discharged or who quits, 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 thereof is commenced; but the wages shall not continue for more than 30 days.

136. Plaintiff alleges that, as described herein, OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to pay all minimum, regular, overtime, and/or premium wages earned by OnSite Employees, including Plaintiff, on the days designated in advance by OnSite as regular pay days. Moreover, OnSite did not, and does not, have a policy, practice, procedure, guideline, and/or culture of paying Plaintiff and other OnSite Employees all earned overtime wages on the payday for the next regular payroll period. Thus, OnSite failed to pay Plaintiff and other OnSite Employees all earned wages in a timely manner, as required by Labor Code § 204.

137. Plaintiff further alleges that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay former OnSite Employees, including Plaintiff, all wages due and owing upon separation of employment. For instance, Plaintiff ended his employment relationship with OnSite on September 8, 2021; however, OnSite did not pay Plaintiff all wages owed to him within the 72-hour timeframe required by Labor Code § 202(a). Rather, OnSite instructed Plaintiff that he was required to complete certain paperwork and perform additional tasks as a condition of receiving his final paycheck. OnSite refused to furnish Plaintiff with his final pay until Plaintiff notified OnSite that he would be filing a claim with the Labor Board.

138. Plaintiff further alleges that due to OnSite's failure to timely and appropriately compensate OnSite Employees, including Plaintiff, for all minimum, regular, overtime, and/or premium wages, OnSite has a policy, practice, procedure, guideline, and/or culture of willfully failing to timely pay all wages due and owed to Plaintiff and other former OnSite Employees who separated from their employment during the relevant statutory period.

139. Plaintiff also alleges that OnSite had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to pay the appropriate waiting time penalties to OnSite Employees as

provided under California law. For example, Plaintiff has not yet received the required waiting time penalties for OnSite's late payment of his final wages.

140. OnSite knowingly failed to timely and appropriately compensate OnSite Employees, including Plaintiff, for all minimum, regular, overtime, and meal and/or rest period premium wages, as described herein.

141. Although OnSite no longer employs a number of OnSite Employees, including Plaintiff, OnSite has yet to pay all wages owed to former OnSite Employees, including Plaintiff, as required under California law, as well as the required waiting time penalties.

142. As a consequence of OnSite's willful and deliberate refusal to render such wages, Plaintiff and former OnSite Employees are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code § 203, as well as penalties pursuant to Labor Code § 210.

143. Plaintiff, on behalf of himself and all other OnSite Employees, is also entitled to, and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

144. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as described in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff, Individually and on behalf of the Class, Against OnSite and Does 1-50)

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

[Bus. & Prof. Code §§ 17200, *et seq.*]

145. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

146. As codified in Business & Professions Code §§ 17200, *et seq.*, California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

147. A cause of action may be brought under the UCL if a practice violates some other law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code §§ 17200, *et seq.* (*Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel.*

Co. (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 “unlawful” violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

148. The “unfair” prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the “unfair standard” is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-81.)

149. Under the UCL, a “fraudulent” business act or practice is one where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under § 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

150. As discussed herein, OnSite’s business practices violate all three prongs of California’s UCL.

Unlawful

151. As described herein, OnSite violated the Labor Code by, among other things, refusing to properly compensate OnSite Employees for all time worked, including overtime wages and time spent performing work while off-the-clock. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at p. 180.) OnSite further violated California law by failing to provide legally compliant meal and/or rest periods and/or pay premium wages in lieu thereof; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to reimburse employees for necessary business expenditures; failing to furnish accurate itemized wage statements; and failing to maintain accurate records. Therefore, OnSite has clearly engaged in unlawful business practices pursuant to Business & Professions Code §§ 17200, *et seq.*

Unfair

152. OnSite's policy, practice, procedure, guideline, and/or culture of requiring OnSite Employees to restock supplies, coordinate carpooling with co-workers, complete shift debriefings, and perform other job duties while off-the-clock is inherently unfair because OnSite knowingly prevents OnSite Employees from receiving adequate compensation for all time actually worked, in violation of California's policy of prompt payment of earned wages.

153. OnSite's policy, practice, procedure, guideline, and/or culture of failing to provide OnSite Employees, including Plaintiff, with legally compliant meal and/or rest periods, as a result of requiring OnSite Employees to be "on-call" and readily available to respond to emergency situations throughout their entire shifts, constitutes an unfair practice because OnSite knowingly strips OnSite Employees of their rights under the Labor Code.

154. OnSite also violates the unfair prong of the UCL by failing to pay premium wages to OnSite Employees for unlawful meal and/or rest periods because OnSite knowingly denied OnSite Employees, including Plaintiff, their legal right to one additional hour of pay at their regular rate of pay for each workday a meal period was not provided.

155. OnSite's policy, practice, procedure, guideline, and/or culture of requiring OnSite Employees to use their personal cell phones and/or vehicles in the discharge of their job duties without reimbursement is inherently unfair because OnSite Employees, including Plaintiff, incurred significant costs in connection with the work performed on behalf of OnSite.

156. OnSite's policy, practice, procedure, guideline, and/or culture of failing to provide OnSite Employees with accurate itemized wage statements is a violation of the unfair prong of the UCL because OnSite knowingly denied OnSite Employees their legal right and protected interest in readily ascertaining their total number of hours worked and the applicable hourly rates in effect during the pay period.

157. Additionally, OnSite's failure to timely pay Plaintiff and other OnSite Employees all minimum, regular, overtime, and/or premium wages upon separation of employment violates the unfair prong of the UCL because OnSite knowingly deprived OnSite Employees of timely compensation of their final earned wages, in violation of California law.

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Fraudulent

158. OnSite's policy, practice, procedure, guideline, and/or culture of improperly considering the work that OnSite Employees, including Plaintiff, performed while off-the-clock as non-compensable time constitutes a fraudulent business practice as it knowingly and intentionally deprived OnSite Employees of all minimum, regular, and/or overtime wages earned for all time actually worked as mandated by California law, as well as premium wages for non-compliant meal and/or rest periods.

159. OnSite's policy, practice, procedure, guideline, and/or culture of furnishing Plaintiff and other OnSite Employees with inaccurate itemized wage statements constitutes a fraudulent business practice because Plaintiff and other OnSite Employees are likely to be, and were actually deceived, as to whether they were paid for all time worked.

160. Further, OnSite's failure to maintain accurate employee and/or payroll records is also a fraudulent business practice as the inaccuracies intentionally mislead OnSite Employees as to their total hours worked, wages earned, and signed agreements.

161. As a direct and proximate result of OnSite's unlawful, unfair and fraudulent business practices, Plaintiff and other OnSite Employees have suffered injury-in-fact and have lost wages rightfully owed to them.

162. Through its unlawful, unfair, and fraudulent conduct, OnSite has been unjustly enriched by receiving and continuing to receive benefits and profits at the expense of OnSite Employees. Therefore, pursuant to Business & Professions Code §§ 17200, *et seq.*, OnSite should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and other OnSite Employees the wages wrongfully withheld from them.

163. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has continued, and there is no indication that OnSite will refrain from such activity in the future. Plaintiff believes and alleges that if OnSite is not enjoined from the conduct described herein, OnSite will continue to violate California law at the expense of OnSite Employees. Accordingly, Plaintiff requests that the Court issue a preliminary and permanent injunction against OnSite.

164. Plaintiff, on behalf of himself and all other OnSite Employees, requests further relief as described in the below prayer.

EIGHTH CAUSE OF ACTION

(By Plaintiff in his Representative Capacity Against OnSite and Does 1-50)

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698, *et seq.*]

165. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

166. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that 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 violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

167. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with LWDA, OnSite was Plaintiff's and all other OnSite Employees' employer or person acting on behalf of OnSite Employees' employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

168. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by the alleged violator, OnSite, and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other OnSite Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

169. Plaintiff alleges that all other OnSite Employees are also "aggrieved employees" under the PAGA as OnSite employed them and all OnSite Employees experienced one or more of the alleged

violations outlined herein.

170. Pursuant to Labor Code §§ 2698, *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On December 7, 2021, Plaintiff submitted written notice to the LWDA and OnSite informing them of OnSite’s alleged violations of the Labor Code pursuant to the PAGA. (Exhibit 1.) Under the statute, the LWDA has sixty-five days from the date of submission to notify the parties of whether it intends to investigate the alleged violations. To date, the LWDA has not notified Plaintiff of its intent to investigate the alleged violations. Thus, Plaintiff has the right to pursue, and does pursue, his claims under the PAGA in a representative capacity pursuant to Labor Code §§ 2698, *et seq.*

171. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, the claims brought under the PAGA are not subject to the requirements for class certification and thus Plaintiff does not seek to certify the claims brought under the PAGA.

172. As set forth herein, OnSite has committed, and continues to commit, numerous violations for which the Labor Code and IWC Wage Order No. 4-2001 entitles Plaintiff in his representative capacity to recover civil penalties, on behalf of himself and all other OnSite Employees and the general public, as well as attorneys’ fees and costs, against OnSite for the alleged violations of the Labor Code, described herein.

173. Plaintiff, in his representative capacity, on behalf of himself and all other OnSite Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on OnSite’s violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failure to pay all minimum, regular, and/or overtime wages in violation of Labor Code §§ 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 4-2001;
- b. Failure to provide the opportunity to take legally compliant meal periods and/or pay premium wages for non-compliant meal periods in violation of Labor Code §§ 226.7, 512, 558, 1198, and the “Meal Periods” section of IWC Wage Order No. 4-2001;

- c. Failure to authorize and permit legally compliant rest periods and/or pay premium wages for non-compliant rest periods in violation of Labor Code §§ 226.7, 558, 1198, and the “Rest Periods” section of IWC Wage Order No. 4-2001;
- d. Failure to reimburse for necessary business expenses in violation of Labor Code § 2802;
- e. Failure to maintain accurate records in violation of Labor Code §§ 1174, 1174.5, 1198, and the “Records” section of IWC Wage Order No. 4-2001;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, 246, 248.5, and 1198; and
- g. Failure to timely pay all wages due during and upon separation of employment in violation of Labor Code §§ 201-204, 210, 1194, 1194.2, 1198, and the “Minimum Wages” section of IWC Wage Order No. 4-2001.

174. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 204 and 204(b) shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 210 on behalf of himself and all other OnSite Employees.

175. Labor Code § 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section... 223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for each subsequent violation, or any willful or intentional violation, in addition to any other penalty. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 225.5 on behalf of himself and all other OnSite Employees.

176. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 226.3 on behalf of himself and all other OnSite Employees.

177. For violations of Labor Code § 246, Labor Code § 248.5(e) entitles the Labor Commissioner to collect from an employer, in a civil action, "...the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred...." Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 248.5(e) on behalf of himself and all other OnSite Employees.

178. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 558 on behalf of himself and all other OnSite Employees.

179. Labor Code § 558.1(a) states that, "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated" Labor Code §§ 203, 226.7, 1194, or 2802, may be held liable as the employer for such violation. Pursuant to Labor Code § 558.1(b), the owners, officers, directors, or managing agents of OnSite may be held liable for civil penalties imposed by Labor Code § 558.

180. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per employee that would be imposed pursuant to Labor Code § 2699(f) for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 1174.5 on behalf of himself and all other OnSite Employees.

181. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his representative capacity, seeks the civil penalty imposed by Labor Code § 1197.1 on behalf of himself and all other OnSite Employees.

182. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation, for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174(c) and (d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff and other OnSite Employees are entitled to, and therefore seek the above-described civil penalty.

183. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other OnSite Employees, is entitled to, and therefore seeks attorneys' fees and costs.

184. Plaintiff, in his representative capacity on behalf of himself and all other OnSite Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

185. Plaintiff, in his representative capacity on behalf of himself and all other OnSite Employees, requests further relief as described in the prayer below.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants in favor of the class action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For all wages and benefits due to Plaintiff and all other OnSite Employees pursuant to California law;
- d. For all minimum, regular and/or overtime wages owed pursuant to Labor Code §§ 510, 558, 1194, 1197.1, and/or other applicable law;
- e. For premium wages pursuant to Labor Code § 226.7 and/or other applicable law;
- f. For waiting time penalties pursuant to Labor Code § 203 and/or other applicable law;
- g. For reimbursement of necessary business expenditures pursuant to Labor Code § 2802 and/or other applicable law;

- h. For damages, pursuant to Labor Code § 226(e)(1), Civil Code § 3281, and/or other applicable law;
- i. For all liquidated damages, pursuant to Labor Code §§ 1194.2, 1197.1, and/or other applicable law;
- j. For any and all penalties available for the violations alleged herein, including penalties under Labor Code §§ 203, 210, 225.5, 226(e)(1), 226.3, 248.5, 558, 1174.5, 1197.1, and/or other applicable law;
- k. For injunctive relief, pursuant to Labor Code § 226(h) and Business & Professions Code § 17203, and/or other applicable law;
- l. For restitution for Defendants’ unfair, unlawful, and fraudulent business practices as provided by Labor Code §§ 248.5 and 1197.1, Business & Professions Code § 17203, and/or other applicable law;
- m. For reasonable attorneys’ fees and costs of suit pursuant to Labor Code §§ 218.5, 226(e)(1), 226(h), 248.5, 1194(a), 2802, Code of Civil Procedure § 1021.5, the “common fund” theory, the “substantial benefit” theory, and/or other applicable law, theory or doctrine;
- n. For a declaratory judgment that Defendants violated Labor Code §§ 201-204, 210, 223, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802; the “Hours and Days of Work,” “Minimum Wages,” “Meal Periods,” “Rest Periods,” and “Records,” sections of IWC Wage Order 4-2001; and Business & Professions Code §§ 17200, *et seq.*;
- o. For pre- and post- judgment interest as provided by California law;
- p. For appropriate equitable relief pursuant to California law; and
- q. For any other relief the Court may deem as just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

Dated: February 11, 2022

GRAHAMHOLLIS APC

By: _____

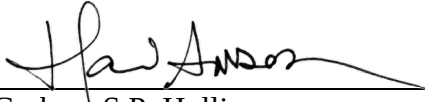

Graham S.P. Hollis
Vilmarie Cordero
Hali M. Anderson
Dustin S. Delp
Attorneys for Plaintiff Dillon Murray

EXHIBIT 1

December 7, 2021

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

OnSite Medical Service, Inc.
638 Cantrill Drive, Suite A2
Davis, CA 95618

OnSite Medical Service, Inc.
c/o Victoria Bailey, Agent for Service of Process
638 Cantrill Drive, Suite A2
Davis, CA 95618

**Re: Dillon Murray's Wage and Hour Claims Against Onsite
 Medical Service, Inc.**

Dear Labor and Workforce Development Agency and OnSite Medical Service, Inc.:

Please be advised that Dillon Murray ("Claimant") has retained our firm to represent him for claims against his former employer, OnSite Medical Service, Inc. ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against Claimant and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment. Claimant intends to represent current and former employees for violations which occurred during the statutory period preceding the filing of a civil lawsuit, including any periods during which equitable or statutory tolling apply (such as the 65 days during which Plaintiff must wait to file a

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Nathan Reese

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Allison Schubert

*Provisionally Licensed Lawyer

civil action under Labor Code § 2699.3(a)(2)(B) and the tolling period provided pursuant to the Judicial Council of California's Covid 19 Pandemic Emergency Rule 9), and continuing through the conclusion of any civil action filed on Claimant's behalf.

FACTUAL BACKGROUND

OnSite Medical Service, Inc. is a California corporation with its principal place of business being in Davis, California. The Company provides outsourced medical care professionals to businesses on a regular, contractual basis, and also provides medical care professionals at special, private events.

The Company employed Claimant at multiple businesses and private events. Claimant is a former employee of the Company, who worked as a non-exempt Emergency Medical Technician at multiple processing plants and private events in and around Davis, California, including at the Campbell's processing plant in Dixon, California. As an Emergency Medical Technician, Claimant provided medical care to the employees of the processing plants and patrons of private events.

At no time during Claimant's employment as an EMT was he primarily engaged in administrative duties, and the majority of the work he performed was non-managerial in nature. Furthermore, Claimant was not primarily engaged in work directly related to management policies or general business operations of the Company. Claimant was not permitted to exercise discretion or independent judgment and could not hire or fire employees. At all times, Claimant was a non-exempt employee and should have received the protections afforded by the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order.

The Company denied Claimant and other aggrieved employees in California specific rights afforded to them under the California Labor Code and the IWC Wage Order. For example, the Company failed to provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums; failed to timely pay them all minimum, regular, and overtime wages owed; failed to reimburse them for all business expenses; failed to maintain accurate records and issue accurate itemized wage statements; and failed to timely pay all wages due during and upon separation of employment.

Throughout Claimant's employment, the Company would instruct Claimant and similarly aggrieved employees to work twelve hour shifts, non-stop, without an opportunity for uninterrupted meal or rest breaks. The Company had a pattern and practice of failing to authorize and permit Claimant and other aggrieved employees to take legally compliant off-duty and uninterrupted rest periods of at least ten (10) minutes for every four-hour work period, or major fraction thereof. For example, Claimant would not have the opportunity to take a rest break uninterrupted because he was forced to carry his radio and be "on-call" throughout the rest break period. There were multiple times at which Claimant was forced to end his rest break prematurely due to having to respond to a medical situation at the worksite.

The Company also routinely failed to provide uninterrupted meal periods at any point during the twelve hour shift. Once again, Claimant would not have any opportunity during his twelve hour shift to take an uninterrupted meal period because he would be "on-call" and required to respond to emergency situations throughout the meal period. The Company had a pattern and practice of failing to authorize and permit Claimant and other aggrieved employees to take legally compliant off-duty and uninterrupted meal periods of at least thirty (30) minutes at the end of every fifth hour of work, and also failed to provide a

second meal period of thirty (30) minutes after the tenth hour of work. Claimant was forced to end meal periods prematurely on many occasions due to having to respond to a medical situation at the job site. Claimant and other aggrieved employees of the Company did not sign a valid on-duty meal period agreement at any point during their employment with the Company, nor did they properly waive any of their meal periods.

Although Claimant and other aggrieved employees were regularly denied compliant meal and rest periods, the Company did not compensate Claimant and other aggrieved employees an additional hour of pay at their regular rate of pay for the times that Claimant and other aggrieved employees were not provided meal periods or authorized or permitted to take compliant rest periods, in violation of Labor Code § 226.7.

The Company also required employees to work off-the-clock, thus depriving them of all minimum and regular wages. Specifically, the Company had a written policy requiring employees to “arrive 10 to 15 minutes prior to shift start” time. Additionally, Claimant and other aggrieved employees would be required to re-stock supplies prior to their shifts, coordinate carpooling, and pick up/drop off gear; but they were not compensated for this time. Further, the Company did not record Claimant’s or other employees’ actual clock-out times. Instead, Claimant and other aggrieved employees would be clocked out when the next employee arrived, without regard for the time it would take to do a shift pass-down. On information and belief, the Company was not only aware of said off-the-clock work, but required it. Because Claimant and other aggrieved employees always worked over eight (8) hours in a workday or over forty (40) hours in a workweek, the time spent off-the-clock also resulted in Claimant and other aggrieved employees being deprived of all overtime compensation earned.

Claimant also believes his overtime was not calculated correctly. Claimant and, upon information and belief, other aggrieved employees were not paid all overtime. Claimant and other aggrieved employees were paid overtime when working over 12 hours in one day or 80 hours in two weeks, but not paid overtime compliant with California law.

As a direct consequence of the Company’s illegal policies as described herein, the Company did not keep accurate records of the actual hours that Claimant and other aggrieved employees actually worked, as well as all wages earned. The Company failed to keep accurate records of Claimant’s and other aggrieved employees’ hours worked when the Company failed to accurately record the proper beginning and ending of each workday and meal period, in addition to the total hours worked during the pay period, among others.

The Company similarly failed to provide Claimant and other aggrieved employees with accurate itemized wage statements. For example, during the applicable statutory period, the Company failed to furnish Claimant and other aggrieved employees with itemized wage statements that included the total regular and overtime hours worked during the pay period, the applicable hourly rates and the corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages earned. There is no total of the hours worked included on the wage statements so it is difficult to ascertain total hours worked. Additionally, the wage statements also failed to provide written notice of accrued and used sick leave hours. Claimant and, on information and belief, other aggrieved employees received no written notice of accrued and used sick leave hours.

To date, the Company has not paid Claimant and other aggrieved employees all wages owed, including all minimum, regular, and overtime wages, as well as all meal and rest period premium wages.

The Company maintained a pattern and practice of failing to pay Claimant and other aggrieved employees all wages due and owing at the time of their separation of employment within the time specified by Labor Code §§ 201 and 202 because the Company failed to pay Claimant and other aggrieved employees all wages due and owing at the time of discharge of their employment. Claimant specifically was told by the Company CEO that he needed to complete certain paperwork and perform certain tasks, as a condition of receiving his final paycheck.

The Company also had a pattern or practice of having employees use their personal cellular devices to perform work duties, such as managing their schedules and clocking in and out for work. Nevertheless, the Company did not pay Claimant and aggrieved employees any reimbursement for their cellular phone expenses incurred as a consequence of their duties of employment. The Company further did not reimburse the mileage expenses accrued by Claimant and other similarly aggrieved employees when these employees drove to private events.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other aggrieved current and former employees of the Company in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the
“Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code section 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code section 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section ...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages as required by law. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND
AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code sections 226.7, 512, 558, 1198, and the “Meal Periods” and
“Rest Periods” sections of the Applicable IWC Wage Order)

Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code section 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further states, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.” Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written

agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” It further states, “[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take uninterrupted, off-duty meal breaks of at least 30-minutes before the start of their sixth hour of work and did not authorize and permit Claimant and other aggrieved employees to take legally compliant rest breaks, as required by California law.

Consequently, Claimant and other aggrieved employees are entitled to receive one-hour of premium wages for each day a compliant meal break was not provided and one-hour of premium wages for each day a compliant rest period was not authorized or permitted. However, the Company failed to pay Claimant and aggrieved employees with all premium wages as required by law.

Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code section 2802)

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,

attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and other aggrieved employees incur expenditures in the discharge of their duties of employment without providing reimbursement, such as cell phone expenses and mileage reimbursements. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198, and the "Records" section of the Applicable IWC Wage Order)

Labor Code section 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments."

The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code sections 226, 226.3, 246, 248.5, and 1198)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: "(1) gross wages earned, (2) total hours worked by the employee, ..., (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, ..., ..., 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."

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent

pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney's fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 246(i) states that "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages." Any person enforcing Labor Code section 246 on behalf of the public "shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs."

As set forth above, and because of the Company's illegal policies and procedures, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not include the total regular and overtime hours actually worked, the applicable hourly rates and corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages earned. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the
"Minimum Wages" section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code section 204(b)(1) states, "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." Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in pertinent part, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5,

any wages of an employee who is discharged or who quits, 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 therefore is commenced; but the wages shall not continue for more than 30 days.”

Lastly, and as a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and all aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtimes wages for all hours worked, and meal and rest period premium wages, as required pursuant to Labor Code §§ 201, 202 and 204. Furthermore, Claimant was told that he would be forced to sign a waiver of claims and/or other paperwork in order to receive his final paycheck.

As set forth above, the Company violated these Labor Code sections by not paying to Claimant and other aggrieved employees all minimum, regular, and overtime wages, and meal and rest break premium wages, within the required time during and upon separation of their employment. As a result of the Company’s failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and other aggrieved employees, which it has not yet paid. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Labor Code section 558.1(a) states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred

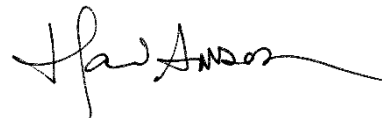
fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpaid Claimant and aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to pay them all regular, minimum, and overtime wages, meal and rest break premium wages, and unreimbursed expenses, as required under Labor Code sections 203, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional violations of the Labor Code or facts in support thereof, additional compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hali Anderson', with a long horizontal flourish extending to the right.

Hali Anderson

HMA/EJA