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behalf of himself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN JOAQUIN**

13 JORGE LOPEZ LOPEZ, an individual, on
14 behalf of himself and others similarly
situated,

15 Plaintiff,

16 vs.

17 B&C PAINTING SOLUTIONS, INC, a
California corporation; PREMIER
18 COATINGS, INC., and DOES 1 through 50,
inclusive,

19 Defendants.
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Case No.: STK-CV-UOE-2021-12028

CLASS ACTION

Assigned for All Purposes To:

Hon. Jayne Lee

Dept.: 10C

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 2802;
10. Failure to Maintain Reasonable Work Area Temperatures under the Wage Orders;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: December 30, 2021
Trial Date: None set

BY FAX

1 Plaintiff JORGE LOPEZ LOPEZ (hereinafter "Plaintiff"), on behalf of himself and other
2 similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, "Employees"; individually, "Employee"), complains of Defendants, and each of
4 them, as follows:

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time from four (4) years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees in positions relating to
9 painting and finishing products by Defendants B&C PAINTING SOLUTIONS, INC., a California
10 corporation, PREMIER COATINGS INC., a California corporation, and DOES 1 through 50,
11 inclusive (all defendants being collectively referred to herein as "Defendants"). Plaintiff alleges
12 that Defendants, and each of them, violated various provisions of the California Labor Code,
13 relevant orders of the Industrial Welfare Commission ("IWC"), and the California Business &
14 Professions Code, and seeks redress for these violations.

15 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for
16 Defendants, including in various painting and finishing related positions with responsibilities for
17 painting and finishing vehicle and industrial parts and packaging and shipping them to
18 Defendants' customers. Defendants employed Plaintiff and the Class members based out of their
19 facilities in Stockton, California and in San Joaquin County. Plaintiff and the other similarly
20 situated Class members worked at Defendants' behest without being paid all wages due and
21 without being provided all required breaks. More specifically, Plaintiff and the other similarly
22 situated Class members were employed by Defendants and shared similar job duties and
23 responsibilities, were subjected to the same policies and practices, and endured similar violations
24 at the hands of Defendants as the other Employee Class members who served in similar and
25 related positions.

26 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
27 and failed to record accurate time worked by these Employees, failed to pay them at the
28 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or

1 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
2 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
3 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
4 under Defendants' control and were not provided with the opportunity to take full uninterrupted
5 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
6 paragraphs of the IWC Wage Orders.

7 4. Defendant B&C PAINTING SOLUTIONS, INC. ("B&C") is a California
8 corporation with its offices and headquarters located in Stockton, California and in San Joaquin
9 County. "B&C" is all that is listed as the employer on the wage statements issued to Plaintiff, and
10 upon information and belief the other members of the Class. The web-site for it explains that, "B
11 & C Painting Solutions has been providing Northern California with quality production powder
12 coating, liquid painting, and screen printing services since 2002." It also explains: "We provide
13 services for Prototype and Production, Powder coating, Liquid coating, Conductive Coating,
14 Screen Printing and sandblasting for a wide variety of clients," which "include Automotive
15 manufactures, electronics companies, several in Silicon Valley, the medical field" and "several
16 worldwide known companies."

17 5. Defendant PREMIER COATINGS, INC. is a California corporation that is, upon
18 information and belief, a related entity to B&C Painting Solutions, Inc. and performs similar
19 painting and finishing service based out of Defendants' Stockton, California facilities. Its web-site
20 explains: "Premier Finishing has maintained its position on the cutting-edge of Powder Coating,
21 Liquid Coating, EMI-RFI Shielding, Production Silk-screening, Pad-printing and Light
22 Mechanical Assembly. Premier's focus is serving industrial applications..." Upon information
23 and belief, PREMIER COATINGS, INC. is related to B&C Painting Solutions, Inc. and jointly
24 employed and employs Class members in concert with B&C Painting Solutions, Inc.. It lists its
25 principal executive and California offices in Stockton, California and in San Joaquin County, and
26 lists its type of business as "Painting Job Shop."

27 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought

1 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
2 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
3 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
4 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Joaquin
5 County and where Defendants maintain offices and headquarters in Stockton, California.

6 7. The true names and capacities, whether individual, corporate, associate, or
7 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
8 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
9 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
10 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
11 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
12 this Complaint to reflect the true names and capacities of the Defendants designated herein as
13 Does 1 through 50 when their identities become known.

14 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
15 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
16 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
17 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
18 all respects as the employers or joint employers of Employees. Defendants, and each of them,
19 exercised control over the wages, hours or working conditions of Employees, created and
20 implemented the policies and practices that governed the employment of Plaintiff and the Class
21 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
22 Plaintiff and the other Employee Class members to work, or engaged them, thereby creating a
23 common law employment relationship with the Employee Class members. Therefore, Defendants,
24 and each of them, employed or jointly employed the Employee Class members.

25 **FACTUAL BACKGROUND**

26 9. The Employees who comprise the Class, including Plaintiff, are non-exempt
27 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
28 (“IWC”). During the period of four years prior to the filing of this action through its resolution,

1 the Employee Class members were employed by Defendants and worked in non-exempt positions
2 at the direction of Defendants in the State of California. Plaintiff and the Class members were
3 either not paid by Defendants for all hours worked or were not paid at the appropriate minimum,
4 regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the
5 Class members all wages due and owing, including by requiring off the clock work, failed to
6 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
7 various provisions of the California Labor Code and applicable paragraphs of the IWC Wage
8 Orders.

9 10. During the course of Plaintiff and the Class members' employment with
10 Defendants, they were not paid all wages they were owed, including for all work performed
11 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
12 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
13 Upon information and belief, Defendants employ other non-exempt, hourly employees in similar
14 painting and finishing jobs and related positions at Defendants' facilities in California.

15 11. During a majority of the Class Period (i.e. starting four years prior to Complaint
16 filing), and for many years before it, Plaintiff was scheduled to work 10.5 or 11 hour shifts, with
17 an automatically deducted 30 minute meal period. The work weeks were generally from Monday
18 through Friday, with some work on Saturdays. Defendants recently began focusing on
19 minimizing overtime, and instituted work schedules for 8.5 hour work shifts or less, including
20 automatic 30 minute meal period deductions from hours worked.

21 12. Defendants' uniformly applied policies and practices unlawfully required Plaintiff
22 and the Class member to incur hours worked for which they were not paid. More specifically, off
23 the clock work occurred in tasks before and after shifts Plaintiff and the Class members were
24 required to complete, including occasions when they were required to perform set up and shift
25 start up related tasks and after work shifts in the event a job remained incomplete after regular
26 hours. Defendants also required employees to undergo temperature screenings before clocking in
27 for their work shifts, and lines for clocking in and out at the time clocks contributed to further off
28 the clock work. Defendants would also contact Plaintiff on his cellular phone outside of the

1 normal work day hours or during breaks in them to address scheduling, work priorities, and other
2 work related issues. Defendants failed to reimburse Plaintiff and the Class members for such
3 additional off the clock work. Plaintiff and the other Class members were also not paid all wages
4 owed by Defendants' practice of rounding away hours or time shaving or otherwise under-
5 reporting hours worked.

6 13. During their operations for most of the Class Period, Defendants did not impose
7 restraints on overtime and employees regularly incurred it during shifts generally scheduled for
8 ten hours or more. Despite Defendants' more recent efforts to curtail overtime hours, the
9 transition to eight hour shifts in combination with off the clock work before work shifts have
10 combined to result in overtime incurring earlier in a shift than when Defendants started paying it.
11 On the occasions when Defendants paid Plaintiff and the Class members overtime and any non-
12 discretionary bonuses or shift premiums or other forms of remuneration during the same pay
13 period, upon information and belief Defendants miscalculated the regular rate of pay used to
14 calculate and pay overtime premium wage rates by failing to include all forms of remuneration
15 received during the pay period in that regular rate calculation.

16 14. When Defendants transitioned to generally discouraging employees from incurring
17 overtime, they endeavored to schedule shifts for less than eight hours a day or forty in a week.
18 However, on the occasions when they did work overtime hours, Defendants' unlawful
19 timekeeping practices regarding off the clock work also resulted in failure to pay Plaintiff and the
20 Class members for overtime hours worked at the correct overtime premium rate. With the hours
21 worked off the clock before shifts commenced, and when Plaintiff and the Class members worked
22 past eight hours on their shifts, they were not paid an overtime premium for these hours worked
23 over eight. By the off the clock work addressed above, the Employees in the Class began
24 incurring overtime hours before the alleged eight hour mark when Defendants began paying any
25 overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct overtime
26 rate of pay.

27 15. Plaintiff was therefore not paid for all his hours worked at the required minimum,
28 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy

1 and practice of requiring him to work off the clock and without pay. Defendants systematically
2 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates
3 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
4 day at the required double time rate. Upon information and belief, the Class members were bound
5 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
6 hands as Plaintiff.

7 16. Defendants have either failed to maintain timekeeping records for Plaintiff that
8 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
9 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
10 declined to produce them to Plaintiff in response to a timely and lawful records request. By
11 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the
12 Class members, Defendants have committed knowing and intentional ongoing violations of the
13 record keeping requirements under the Labor Code, including section 1174, by either failing to
14 maintain records or retaining inaccurate ones.

15 17. The failure to pay for all hours worked and underpayment of wages to Plaintiff
16 and the Class members is and has been a direct consequence of Defendants' unlawful
17 compensation policies and practices, which upon information and belief applied uniformly to the
18 Class members working at Defendants' facilities throughout Stockton and California. As a result
19 of the above-described unlawful requirements to work off the clock, the failure to accurately
20 record all hours worked and pay wages at the correct rates, and the other wage violations they
21 endured at Defendants' hands, Plaintiff and the Class members were not properly paid all wages
22 earned and all wages owed to them by Defendants, including when working more than eight
23 hours in any given day and/or more than forty hours in any given week.

24 18. Therefore, from at least four years prior to the filing of this lawsuit and continuing
25 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
26 hours worked and failing to pay minimum wages for all time worked, as required by California
27 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
28 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation

1 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
2 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
3 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

4 19. Defendants also failed to provide Plaintiff and the Class members with their
5 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts
6 duration. The above described off the clock work contributed to Defendants' common policy of
7 failing to provide lawful meal periods to Plaintiff and the Class members, as required under the
8 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize
9 and permit Plaintiff and the employee Class Members to take all required 10-minute rest breaks, as
10 required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

11 20. More specifically, meal periods were often not lawfully provided, and upon
12 information and belief, Defendants inputted or required employees to input timekeeping entries to
13 make it appear as though compliant 30 minute meal periods were provided. On some shifts
14 Defendants failed to provide meal periods to Plaintiff, and when Plaintiff did receive a meal
15 period, it was often untimely or shortened or otherwise interrupted by virtue of the work demands
16 and management pressure he faced to complete his various work tasks. When Plaintiff worked
17 shifts over ten hours, Defendants neglected to provide him with a lawful second meal period.
18 Defendants failed to pay meal period premiums to Class members for all meal periods they
19 unlawfully provided, but when and if they did, upon information and belief there were occasions
20 when Defendants miscalculated the regular rate of compensation used to calculate and pay meal
21 period premiums by failing to include all forms of remuneration received during the pay period in
22 that regular rate calculation.

23 21. Defendants thus failed to provide all the legally required unpaid, off-duty meal
24 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
25 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
26 members were required to perform work as ordered by Defendants for more than five hours during
27 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
28 followed a practice of requiring off the clock work in a manner that would impact when

1 Employees were to receive meal periods and rest breaks, thus leading to further violations.

2 22. Upon information and belief, Defendants' systems did not automatically generate a
3 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
4 into a work shift or in the event the time punch records reflected a meal period of less than 30
5 minutes or a missed meal. However, upon information and belief, in the event Defendants did pay
6 any meal period premiums, they did so at the employee's customary regular rate of hourly
7 compensation without including all forms of remuneration in that hourly rate calculation, for
8 example by omitting bonuses and the like from the rate at which meal premiums were paid.

9 23. Defendants thus followed uniformly applied policies of not providing all required
10 meal periods to their Employees. Meal periods were often not properly provided, as work
11 demands impermissibly shortened their breaks or rendered them untimely. Even when Plaintiff
12 and the Class members were able to take a meal period, it was often provided for less than the
13 required 30 minutes or was otherwise interrupted by work duties or was taken after the fifth hour
14 of work. Additionally, as addressed above, Defendants followed a practice of requiring off the
15 clock work in a manner that would impact when Employees were to receive meal periods and rest
16 breaks, thus leading to further violations.

17 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
18 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
19 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
20 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at
21 each Employee's effective regular hourly rate of compensation for each meal period or rest break
22 that Defendants failed to provide or deficiently provided.

23 25. Therefore, for at least four years prior to the filing of this action and through to the
24 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
25 provided with the opportunity to take required breaks as required under the Labor Code and Wage
26 Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Class
27 members were provided with a meal period, it was often untimely or interrupted, or was
28 impermissibly shortened, and Employees were not provided with one hour's wages at their regular

rate in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- (a) Class members were not provided full thirty-minute duty free meal periods for work days in excess of five hours and were not compensated one hour's wages in lieu thereof, or were not compensated at the correct regular rate of compensation, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period or to leave Defendants' premises.

26. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members were either not authorized permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to instructions from management and job and customer demands and to walk to authorized break areas. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class members to remain under their control during required off-duty rest break times. Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted.

27. During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Class members were and are under Defendants' control when they are working through rest breaks and traveling to break rooms.

Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises during rest breaks under Defendants' policies and practices. Rest period violations therefore arose in one or more of the following manners:

- (a) Class members were required to work without being provided a minimum ten minute rest period for every four hours or major fraction thereof worked and were not compensated one hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

28. From at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and on-duty work while on unpaid meal breaks. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

29. Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the aggrieved employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to

1 the Class members during the relevant time period, including by failing to provide two work
2 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
3 248.2 and including damages and penalties as these sections are enforced through Labor Code §
4 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
5 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
6 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
7 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seeks this relief
8 available for Defendants’ failure to provide Employees with all their required and earned sick
9 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
10 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
11 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
12 and costs pursuant to Labor Code § 2699(g)(1).

13 30. As a result of these illegal policies and practices, Defendants also engaged in and
14 enforced the following additional unlawful practices and policies against Plaintiff and the Class
15 members he seeks to represent:

- 16 (a) failing to pay all wages owed to Class members who either were
17 discharged, laid off, or resigned in accordance with the requirements of
18 Labor Code §§ 201, 202, 203;
- 19 (b) failing to pay all wages owed to the Class members twice monthly in
20 accordance with the requirements of Labor Code § 204;
- 21 (c) failing to pay Class members all wages owed, including all meal and rest
22 period premium wages, and failing to pay them at the regular rate of
23 compensation;
- 24 (d) failing to maintain accurate records of Class members’ hours worked and
25 earned wages and meal periods in violation of Labor Code §§ 226 and
26 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 27 (e) failing to produce timekeeping records in response to Plaintiff’s timely and
28 lawful request to receive them under these authorities.

1 31. Defendants have also consistently failed to provide Class members with timely,
2 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
3 including by the above-described requirement of off the clock work, failure to pay all overtime
4 and double time wages owed, and failure to pay premium wages for unprovided or otherwise
5 unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break
6 premium wages. Defendants have also made it difficult to account with precision for the
7 unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class,
8 during the liability period, including to the extent they did not calculate the regular rate of pay
9 correctly when paying overtime or meal period premiums and because they did not implement and
10 preserve a record-keeping method as required for non-exempt employees by California Labor
11 Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon
12 information and belief, time clock punches were not maintained or were not accurately maintained
13 for work shifts and meal periods, which were automatically presumed by Defendants to have been
14 lawfully provided when they were not. Defendants also failed to accurately record and pay for all
15 regular and overtime hours worked and submitted by Plaintiff and the Class members, including
16 by failing to pay all overtime hours at the correctly calculated overtime premium rate.

17 32. Defendants have thus also failed to comply with Labor Code § 226(a) by
18 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
19 members, along with the appropriate applicable rates, among others requirements. Additionally,
20 Defendants listed only B&C as the employer on wage statements issued to Plaintiff and the Class
21 members, but failed to list the entire name of the entity. This violates Labor Code § 226(a)(8)
22 requiring employers to accurately list the name and address of the legal entity that is the employer.
23 To the extent Defendants may assert Premier Coatings, Inc. is the employer rather than B&C
24 Painting Solutions, Inc., then these wage statements violate section 226(a)(8) by failing to list the
25 correct legal entity that is the employer. Plaintiff and Class members are therefore entitled to
26 penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants
27 have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by
28 failing to maintain time records showing when the employee begins and ends each work period,

1 meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours worked by
2 itemizing in wage statements all deductions from payment of wages and accurately reporting total
3 hours worked.

4 33. Defendants also required Plaintiff and the Class members to work hours off the
5 clock for which they were not compensated. They were also required to endure off the clock work
6 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
7 provided with sick pay and supplemental sick leave. Defendants also failed to pay all overtime
8 premium wages owed for work conducted on a work shift and a work day, as addressed above.
9 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all
10 wages owed to Plaintiff and other similarly situated Employees at the time of their termination or
11 within seventy-two hours of their resignation, as required by California wage-and-hour laws.

12 34. Additionally, Labor Code § 1198 requires that “. . . the standard conditions of
13 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
14 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”
15 Paragraph 15 of the applicable IWC Wage Orders requires the following regarding the
16 temperatures maintained at employers’ facilities within California: “(A) The temperature
17 maintained in each work area shall provide reasonable comfort consistent with industry-wide
18 standards for the nature of the process and the work performed...” Defendants also violated the
19 Labor Code and Wage Orders by, upon information and belief, failing to maintain reasonable
20 temperatures throughout Defendants’ facilities and instead compelling employees to work and
21 operate machinery and equipment in excessively hot work areas.

22 35. Additionally, from at least four years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
24 incur necessary business expenses in the course of performing their required job duties without
25 reimbursement. Defendants required Plaintiff to use his personal cellular phone to respond to and
26 communicate with Defendants and their managers regarding work matters, jobs and job
27 completion status and scheduling, including while on duty or during breaks or when they were
28 off-duty and not otherwise working. Plaintiff asserts these calls and activities conducted through

his cell phone were necessary and required work-related communications. Upon information and belief, the other Class members incurred similar cellular phone related expenses for performing necessary work-related communications, for which they were also not reimbursed by Defendant. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so. Defendants uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

36. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246, 248.1, 248.5, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

37. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

38. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees at Defendants’ painting and finishing facilities within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all

hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Failure to Maintain Reasonable Temperature Subclass: All Class members who, within the applicable limitations period, were required by Defendants to work in areas with temperatures that were not maintained to provide reasonable comfort consistent with applicable standards.

j. Subclass 10. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

39. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

40. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

41. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

A. Numerosity

42. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

B. Commonality

43. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and

work periods;

- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

44. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

45. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

1 47. As to the issues raised in this case, a class action is superior to all other methods for
2 the fair and efficient adjudication of this controversy, as joinder of all Class members is
3 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
4 members. Further, as the economic or other loss suffered by vast numbers of Class members may
5 be relatively small, the expense and burden of individual actions makes it difficult for the Class
6 members to individually redress the wrongs they have suffered. Moreover, in the event
7 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
8 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
9 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
10 to vindicate their rights for violations they endured which they would otherwise be foreclosed
11 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

12 48. Class action treatment will allow those persons similarly situated to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
15 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
16 set forth the subject and nature of the instant action. The Defendants' own business records can be
17 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
18 that any further notice is required additional media and/or mailings can be used.

19 49. Defendants, as prospective and actual employers of the Employees in the Class,
20 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
21 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
22 Employees as well as the effect of any alleged arbitration agreements that may have been forced
23 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
24 and policies, most notably intentionally refusing to pay for all hours actually worked which should
25 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
26 agreements and policies and practices on the Employees and Class as a whole.

27 50. Plaintiff and the Employees in the Class did not discover the fact that they were
28 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there

1 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
2 jury, right to collectively organize and oppose unlawful pay practices under California law as well
3 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
4 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered
5 their claims.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(Against All Defendants)**

9 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 52. Defendants failed to pay Employees minimum wages for all hours worked.
12 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
13 would work hours and not receive wages, including as alleged above in connection with off the
14 clock work, including all the time required to remain on duty and under Defendants' control
15 during breaks and due to the work demands placed upon them by Defendants' management and
16 customers. Defendants' uniformly applied policies required systematic off the clock work and
17 underpayment of all wages owed to Employees over a period of time, while benefiting
18 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
19 wages to Plaintiff and the Class members, including by requiring systematic off the clock work.
20 To the extent any local wage ordinances were also applicable to paying the employees an hourly
21 rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances.
22 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
23 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
24 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
25 wage pay.

26 53. In California, employees must be paid at least the then applicable state minimum
27 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
28 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally,

1 pursuant to California Labor Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked. Defendants failed to do
3 so.

4 54. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
5 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
6 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
7 applicable minimum wage rate fixed by the commission for work during the relevant period is
8 found in the Wage Orders.

9 55. The minimum wage provisions of California Labor Code are enforceable by private
10 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
11 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including
14 interest thereon, reasonable attorney’s fees and costs of suit.”

15 56. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
16 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
17 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
18 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
19 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
20 the absence of a contractually agreed upon one.

21 57. In committing these violations of the California Labor Code, Defendants
22 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
23 reflect their actual hours worked, or miscalculate hours or rates or otherwise underpaid the actual
24 time worked by Plaintiff and other members of the Class, including by requiring off the clock
25 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
26 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
27 Welfare Commission requirements and other applicable laws and regulations. As a result of these
28

1 violations, Defendants also failed to timely pay all wages earned in accordance with California
2 Labor Code § 1194.

3 58. California Labor Code § 1194.2 also provides for the following remedies: “In any
4 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
5 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
6 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

7 59. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
8 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
9 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
10 pay each employee minimum wages.

11 60. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
12 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
13 interest thereon.

14 61. Defendants have the ability to pay minimum wages for all time worked and have
15 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
16 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

17 62. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
18 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
19 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
20 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
21 members of the Class further request recovery of all unpaid wages, according to proof, interest,
22 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
23 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
24 wage compensation is determined to be owed to the Class members who have terminated their
25 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
26 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
27 which penalties are sought herein on behalf of these Class members. Defendants’ failure to timely
28 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §

226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

64. California Labor Code § 1194 provides that "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." The action may be maintained directly against the employer in an employee's name without first filing a claim with the Division of Labor Standards and Enforcement.

65. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees for all hours worked, including: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

66. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above, by under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants have also failed to include all forms of remuneration in the regular rate of pay used to calculate and pay overtime, and failed to begin paying overtime when it was incurred due to the off the clock work, as detailed above.

1 67. Defendants thus had a consistent policy of not paying Employees wages for all
2 hours worked, including hours at their required regular, overtime, and double-time rates.
3 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
4 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
5 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
6 Class members all earned and owed straight time and overtime wages and other benefits, in
7 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
8 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
9 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
10 employees to work through meal periods or remain under Defendants' control when they were
11 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
12 respond to demands from customers and managers. Therefore, Employees were not properly
13 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
14 given day, and/or forty hours in a given week. Based on information and belief, Defendants did
15 not make available to Employees a reasonable protocol for correcting time records when
16 Employees worked overtime hours or to fix incorrect time entries or those that Defendants
17 unlawfully under-recorded to the Employee's detriment. Defendants have also violated these
18 provisions by requiring Plaintiff and other similarly situated Class members to work through meal
19 periods when they were required to be clocked out or to otherwise work off the clock to complete
20 their daily job duties.

21 68. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
22 regular wages owed and overtime compensation for all hours worked, as required by California
23 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
24 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
25 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

26 69. Additionally, Labor Code § 558(a) provides "any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

1 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
2 pay period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
4 underpaid employee for each pay period for which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
6 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
7 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
8 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
9 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
10 Code § 558.

11 70. Defendants’ failure to pay compensation in a timely fashion also constituted a
12 violation of California Labor Code § 204, which requires that all wages shall be paid
13 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
14 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
15 and overtime compensation earned by Employees. Each such failure to make a timely payment of
16 compensation to Employees constitutes a separate violation of California Labor Code § 204.

17 71. Employees have been damaged by these violations of California Labor Code §§
18 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
19 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
20 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
21 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
22 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
23 any order or ruling of the commission.”

24 72. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
26 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
27 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
28 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties

1 against Defendants, and each of them, and any additional sums as provided by the Labor Code
2 and/or other statutes.

3 **THIRD CAUSE OF ACTION**

4 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

5 **(Against All Defendants)**

6 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 74. Employees regularly worked shifts greater than five (5) hours and in some
9 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
10 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
11 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
12 for a shift of more than ten (10) hours without providing him or her with a second meal period of
13 not less than thirty (30) minutes.

14 75. Defendants failed to provide Employees with meal periods as required under the
15 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
16 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
17 provided them after Employees worked beyond the fifth hour of their shifts or Employees
18 otherwise had them shortened and interrupted by work demands and requirements to perform off
19 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
20 on the occasions when Employees worked more than ten (10) hours in a given shift, they did so
21 without receiving a second uninterrupted thirty (30) minute meal period as required by law.

22 76. Defendants thus failed to provide Plaintiff and the Class members with meal
23 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
24 including by not providing them with the opportunity to take meal breaks, by providing them late
25 or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

26 77. Moreover, Defendants failed to compensate Employees for each meal period not
27 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
28 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an

1 employee a meal period in accordance with this section, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
3 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
4 period premiums, they upon information and belief underpaid them by miscalculating the regular
5 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
6 compensate the Employees in the Class for each meal period not provided or inadequately
7 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
8 Wage Order.

9 78. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
10 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
11 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
12 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
13 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
14 other statutes and applicable IWC Wage Order paragraphs.

15 **FOURTH CAUSE OF ACTION**

16 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

17 **(Against All Defendants)**

18 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 80. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
21 provide that employers must authorize and permit all employees to take rest periods at the rate of
22 ten (10) minutes net rest time per four (4) work hours.

23 81. Employees consistently worked consecutive four (4) hour shifts and were generally
24 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
25 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
26 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for
27 each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest
28 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were

1 often required to work or to otherwise remain under Defendants' control during rest periods,
2 including by responding to work requirements or walk to break areas, and had breaks provided
3 untimely as a result of the above described off the clock work. Plaintiff and the Class members
4 were also not permitted to leave their work premises during rest breaks.

5 82. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
6 Orders provide that if an employer fails to provide an employee rest period in accordance with this
7 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
8 compensation (as further detailed above regarding meal periods) for each workday that the rest
9 period is not provided. Defendants failed to do so.

10 83. Defendants, and each of them, have therefore intentionally and improperly denied
11 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
12 paragraph 12 of the applicable IWC Wage Orders.

13 84. Defendants failed to authorize and permit Plaintiff and the Class members to take
14 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
15 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
16 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
17 12 and 20 of the applicable IWC Wage Orders.

18 85. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
19 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
20 hour of wages at their effective hourly rates of pay for each day worked without the required rest
21 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
22 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226(a)**

25 **(Against All Defendants)**

26 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.
28

1 87. California Labor Code § 226(a) requires an employer to furnish each of his or her
2 employees with an accurate, itemized statement in writing showing the gross and net earnings,
3 total hours worked, and the corresponding number of hours worked at each hourly rate; these
4 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
5 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
6 statements may be given to the employee separately from the payment of wages; in either case the
7 employer must give the employee these statements twice a month or each time wages are paid.

8 88. Defendants failed to provide Plaintiff and the similarly situated Employee Class
9 members with accurate itemized wage statements in writing, as required by the Labor Code and
10 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
11 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
12 including for all overtime and double time hours worked and for deficient meal periods and rest
13 breaks, all of which Defendants knew or reasonably should have known were owed to the
14 Employees, as alleged above.

15 89. Throughout the liability period, Defendants intentionally failed to furnish to
16 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
17 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
18 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
19 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
20 the employee and only the last four digits of his or her social security number or an employee
21 identification number other than a social security number, (8) the name and address of the legal
22 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
24 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
25 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
26 members with such timely and accurate wage and hour statements.

27 90. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
28 and intentional failure to provide them with the wage and hour statements as required by law and

1 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
2 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
3 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
4 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
5 wage statement alone one or more of the following: (i) The amount of the gross wages or net
6 wages paid to the employee during the pay period or any of the other information required to be
7 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
8 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
9 wages paid to the employee during the pay period, (iii) The name and address of the employer
10 and, (iv) The name of the employee and only the last four digits of his or her social security
11 number or an employee identification number other than a social security number. For purposes
12 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
13 objective standard] would be able to readily ascertain the information without reference to other
14 documents or information.

15 91. Additionally, Defendants listed only “B&C” as the employer on wage statements
16 issued to Plaintiff and upon information and belief the Class members, but failed to list the entire
17 name of the entity. This violates Labor Code § 226(a)(8) requiring employers to accurately list the
18 name and address of the legal entity that is the employer. To the extent Defendants may assert
19 Premier Coatings, Inc. is the employer rather than B&C Painting Solutions, Inc., then these wage
20 statements violate section 226(a)(8) by failing to list the correct legal entity that is the employer.

21 92. Under paragraph 4(B) of the applicable IWC Wage Orders, employers are required
22 “to pay each employee, on the established payday for the period involved, not less than the
23 applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
24 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
25 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may
26 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of
27 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
28 Wage Orders.

1 93. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
2 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
3 Class suffered injuries, including among other things confusion over whether they received all
4 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
5 them to make mathematical computations to analyze whether the wages paid in fact compensated
6 them correctly for all hours worked.

7 94. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
8 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
9 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
10 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
11 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
12 an award of costs and reasonable attorneys' fees.

13 **SIXTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 221**
15 **(Against All Defendants)**

16 95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 96. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
19 receive from an employee any part of wages theretofore paid by said employer to said employee."
20 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
21 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
22 to do so.

23 97. Defendants unlawfully received and/or collected wages from the Employees in the
24 Class by requiring off the clock work, by miscalculating overtime, and by automatically deducting
25 time for meal periods when they were not lawfully provided and not paying one hour of pay at the
26 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the
27 other Class members, as alleged above.

1 98. As a direct and proximate cause of the unauthorized deductions, Employees have
2 been damaged, in an amount to be determined at trial.

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 204**
5 **(Against All Defendants)**

6 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 100. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
12 during which the labor was performed, and labor performed between the 16th and the last day,
13 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
15 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
16 calendar days following the close of the payroll period.” As detailed above, Defendants
17 maintained a consistently applied policy and practice of not paying all wages earned between the
18 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
19 between the 16th and the last day of the month between the 1st and 10th day of the following month.
20 Defendants similarly failed to pay all wages earned by not more than seven calendar days
21 following the close of the payroll period.

22 101. All wages due and owing to Plaintiff and the Class members, including as required
23 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
24 required by Labor Code § 1194 and other sections became due and payable to each employee in
25 each pay period that he or she was not provided with a meal period or rest period or paid straight
26 or overtime wages to which he or she was entitled.

27 102. Defendants violated Labor Code § 204 by systematically refusing to timely pay
28 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the

1 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
2 payday for the period involved, not less than the applicable minimum wage for all hours worked in
3 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
6 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
7 penalties under paragraph 20 of the applicable IWC Wage Orders.

8 103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
9 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
10 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
11 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
12 applicable IWC Wage Orders.

13 **EIGHTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 203**
15 **(Against All Defendants)**

16 104. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 105. Plaintiff and numerous Class members are no longer employed by Defendants; they
19 either quit Defendants’ employ or were fired therefrom.

20 106. Defendants failed to pay these Employees all wages due and certain at the time of
21 termination or within seventy-two (72) hours of resignation.

22 107. The wages withheld from these Employees by Defendants remained due and owing
23 for more than thirty (30) days from the date of separation from employment.

24 108. Defendants failed to pay Plaintiff and the Class members without abatement, all
25 wages as defined by applicable California law. Among other things, these Employees were not
26 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
27 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
28 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and

1 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
2 required time was willful within the meaning of Labor Code § 203.

3 109. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
4 are required "to pay each employee, on the established payday for the period involved, not less
5 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
6 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
8 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
9 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
10 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
11 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
12 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
13 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
14 "violates...any provision of this chapter or any order or ruling of the commission."

15 110. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
16 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
17 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
18 shall continue until paid for up to thirty (30) days from the date they were due.

19 **NINTH CAUSE OF ACTION**

20 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

21 **UNDER LABOR CODE § 2802 (Against All Defendants)**

22 111. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 112. Plaintiff and the Class are informed and believe and based thereon allege that
25 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
26 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
27 members to use their cellular phones to complete work related duties and address company
28 business, as detailed above.

113. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

114. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

115. Therefore, Plaintiff and the Class members are entitled to reimbursement for any and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while employed by Defendants, as well as accrued interest on those expenses that were not reimbursed from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

TENTH CAUSE OF ACTION

FAILURE TO MAINTAIN TEMPERATURES UNDER THE WAGE ORDERS

(Against All Defendants)

116. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

117. Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding the temperatures maintained at employers facilities within California: "(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity

1 is created by the work process, the employer shall take all feasible means to reduce such excessive
2 heat or humidity to a degree providing reasonable comfort... (C) A temperature of not less than
3 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.
4 (D) Federal and State energy guidelines shall prevail over any conflicting provision of this
5 section.” (See, e.g., Cal. Code Regs., tit. 8 § 11070(15), Cal. Code Regs., tit. 8, § 11090(15)).

6 118. Further California Labor Code § 6720 required the California Division of
7 Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by
8 January 1 2019. Cal/OSH’s draft standard applies its proposed regulations to all indoor work areas
9 where the temperature equals or exceeds 82° Fahrenheit when employees are present. At times
10 during the relevant time period Plaintiffs and other warehouse workers were subjected to
11 excessive heat and or humidity resulting in temperatures equaling or exceeding 82° F.

12 119. Under Labor Code §1199: “Every employer or other person acting either
13 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
14 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
15 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
16 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
17 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
18 an order of the commission...”

19 120. Defendants violated the Labor Code and Wage Orders by, upon information and
20 belief, failing to maintain reasonable temperatures throughout Defendants’ facilities and instead
21 compelling employees to work and operate machinery and equipment in excessively hot work
22 areas. During the relevant time period, as detailed above, Defendants violated Labor Code §§ 1198
23 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and other
24 Employees with reasonable comfort by maintaining the indoor temperature within the range of
25 industry standards by, *inter alia*, providing adequate air conditioning or heat ventilation etc.
26 Plaintiff is informed and believes that Defendants also failed to maintain the temperature in toilet
27 rooms resting rooms and change rooms during hours of use to no less than 68° F.
28

121. These practices and policies resulted in Defendants' failure to maintain temperature providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders. Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

122. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

123. Plaintiff, on behalf of himself, the Employees in the Class, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

124. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

125. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in that Defendants' policy and practice failed to provide the required amount of compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for all hours worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

1 126. Wage-and-hour laws express fundamental public policies. Paying employees their
2 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
3 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
4 vigorously to enforce minimum labor standards, to ensure that employees are not required or
5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
6 employers and their employees from competitors who lower costs to themselves by failing to
7 comply with minimum labor standards.

8 127. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
11 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
12 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
13 guaranteed to all employees under the law.

14 128. Defendants' conduct, as alleged above, constitutes unfair competition in violation
15 of the Business & Professions Code § 17200 *et seq.*

16 129. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
17 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
18 reasonable care should have known that their conduct was unlawful; therefore their conduct
19 violates the Business & Professions Code § 17200 *et seq.*

20 130. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
23 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
24 should issue declaratory and other equitable relief pursuant to California Business & Professions
25 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
26 competition, including restitution of wages wrongfully withheld.

27 131. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

132. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

133. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in full herein.

134. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time period.

135. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

136. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,

1 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

2 137. More specifically, after complying with the notice procedures of Labor Code §
3 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
4 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
5 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
6 including as follows:

7 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
8 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
9 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
10 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
11 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
12 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
13 to Labor Code § 2699(g)(1);

14 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
15 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
16 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
17 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
18 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
19 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
20 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
21 pursuant to Labor Code § 2699(g)(1);

22 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
23 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
24 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
25 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
26 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
27 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
28 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by

1 providing inaccurate wage statements and failing to maintain records as required under Labor
2 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
3 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a
4 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
5 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
6 citation, ...”;

7 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
8 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
9 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
10 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
11 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
12 § 2699(g)(1);

13 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
14 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
15 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
16 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
17 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
18 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
19 pursuant to Labor Code § 2699(g)(1);

20 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
21 Defendants’ failure to provide Employees with all their required and earned sick days and all their
22 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
23 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
24 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to
25 Labor Code § 2699(g)(1);

26 (g) Failure to Maintain Temperatures: For failure to maintain temperature providing
27 reasonable comfort constituting violations of Labor Code §§ 1198 and 1199 and paragraph 15 of
28 the applicable IWC Wage Orders, and Labor Code § 2699.5, and seeking penalties available and

1 applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders,
2 and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

3 (h) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:

4 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
5 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
6 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
7 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
8 2699(g)(1).

9 138. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek
10 the penalties and remedies set forth in Labor Code § 558, which states:

11 (a) Any employer or other person acting on behalf of an employer who violates, or
12 causes to be violated, a section of this chapter or any provision regulating hours and days of work
13 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
14 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
15 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
16 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid in addition to an amount sufficient to
18 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
19 employee.

20 (b) If upon inspection or investigation the Labor Commissioner determines that a
21 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
22 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
24 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
25 violation of this chapter shall be the same as those set out in Section 1197.1.

26 (c) The civil penalties provided for in this section are in addition to any other civil or
27 criminal penalty provided by law.

28 139. Plaintiff has exhausted his administrative remedies by sending a certified letter to
the LWDA and Defendants postmarked December 30, 2021 (LWDA-CM-860295-21) addressing
in detail the specific provisions of the Labor Code Defendants have violated and addressing the
facts and legal theories to support the alleged violations and requested penalties. The LWDA has
not provided notice of its intent to investigate the alleged violations within 65 calendar days of the
postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

13. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

15. For penalties under Labor Code § 558, as may be proven;

16. For other wages and penalties under the Labor Code as may be proven;

17. For all general, special, and incidental damages as may be proven;

18. For an award of pre-judgment and post-judgment interest;

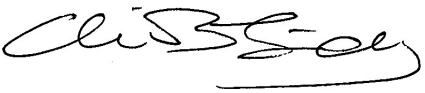
19. For an award providing for the payment of the costs of this suit;

20. For an award of attorneys' fees; and

21. For such other and further relief as this Court may deem proper and just.

DATED: October 27, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff Jorge Lopez Lopez
and all others similarly situated

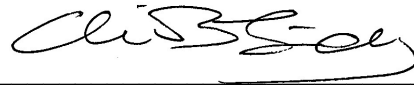
1 **DEMAND FOR JURY TRIAL**

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

3
4 DATED: October 27, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

5
6 By



7 David Yeremian
8 Alvin B. Lindsay
9 Attorneys for Plaintiff Jorge Lopez Lopez
10 and all others similarly situated
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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

Emily A. Wieser
Ewieser@rjo.com
Dennis C. Huie
Dhuie@rjo.com

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] **(BY FACSIMILE)** On _____ before 5:00 p.m., I transmitted such documents from our facsimile machine number (818) 230-0308 to the person(s) at the facsimile numbers listed on the attached service list. Said transmission was reported as complete and without error. A copy of the transmission report which was properly issued by the transmitting facsimile machine is attached hereto.

Executed on November 15, 2022, at La Crescenta, California.

Natalia Bermudes
Natalia Bermudes