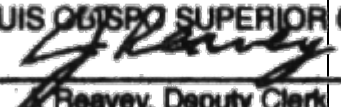


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4/6/2022 9:09 AM

SAN LUIS OBISPO SUPERIOR COURT

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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

MIGUEL A. RAMOS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ENTACT LLC; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 22CV-0032

*Assigned for All Purposes to:
Judge Rita C. Federman*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse Necessary Business Expenses;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Miguel A. Ramos, individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Miguel A. Ramos (“Plaintiff”) brings this putative class action against
5 defendants ENTACT LLC, and DOES 1 through 20, inclusive (collectively, “Defendants”), on
6 behalf of himself individually and a putative class of California citizens who are and were
7 employed by Defendants as non-exempt employees throughout California.

8 2. Defendants are in the business of environmental restoration.

9 3. Through this action, Plaintiff alleges that Defendants have engaged in a
10 systematic pattern of wage and hour violations under the California Labor Code and Industrial
11 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
12 unfair competition.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to pay overtime wages at the proper rates;
- 16 (b) Failing to pay all wages (including minimum wages and overtime
17 wages);
- 18 (c) Failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (d) Failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (e) Failing to provide accurate itemized wage statements;
- 22 (f) Failing to pay all wages due upon separation of employment; and
- 23 (g) Failing to reimburse all business expenses incurred by the employee in
24 direct consequence of the discharge of his or her duties.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
26 others similarly situated in California to recover, among other things, unpaid wages and
27 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
28 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1182.12, 1194,

1 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure
2 § 1021.5.

3 **JURISDICTION AND VENUE**

4 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
5 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
6 of the Superior Court and will be established according to proof at trial.

7 7. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
9 causes except those given by statutes to other courts. The statutes under which this action is
10 brought do not specify any other basis for jurisdiction.

11 8. This Court has jurisdiction over all Defendants because, upon information and
12 belief, they are citizens of California, have sufficient minimum contacts in California, or
13 otherwise intentionally avail themselves of the California market so as to render the exercise of
14 jurisdiction over them by the California courts consistent with traditional notions of fair play
15 and substantial justice.

16 9. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business, or have offices in this county, and the acts and omissions alleged
18 herein took place in this county.

19 **THE PARTIES**

20 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
21 the Class Period in California.

22 11. Plaintiff is informed and believes, and thereon alleges that at all times
23 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
24 Orders as employers, whose employees were and are engaged throughout this county and the
25 State of California.

26 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
27 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
28

1 Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiff and the class members.

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiff seeks
28 relief authorized by California law.

1 20. Plaintiff’s proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between July 27, 2017¹
5 and the date of class certification (“Class”).

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 between July 27, 2018 and the date of class certification (“Subclass” or “Waiting
10 Time Subclass”).

11 22. Plaintiff reserves the right to establish other or additional subclasses, or modify
12 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
13 discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as “Class Members.”

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants paid Plaintiff and Class Members overtime
20 compensation at the proper rates;

21 (b) Whether Defendants failed to implement a valid alternative workweek
22 schedule and thus failed to pay Plaintiff and Class Members proper
23 overtime compensation or failed to pay properly under a valid alternative
24 workweek schedule;

25
26
27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (c) Whether Defendants paid Plaintiff and Class Members all wages
2 (including minimum and overtime wages) for all hours worked by
3 Plaintiff and Class Members;
- 4 (d) Whether Defendants required Plaintiff and Class Members to work over
5 8 hours per day, over twelve (12) hours per day, and/or over forty (40)
6 hours per week and failed to pay them overtime compensation at the
7 proper rate;
- 8 (e) Whether Defendants deprived Plaintiff and Class Members of timely
9 meal periods or required Plaintiff and Class Members to work through
10 meal periods without compensation;
- 11 (f) Whether Defendants deprived Plaintiff and Class Members of rest breaks
12 or required Plaintiff and Class Members to work through rest breaks
13 without compensation;
- 14 (g) Whether Defendants failed to provide Plaintiff and Class Members
15 accurate itemized wage statements;
- 16 (h) Whether Defendants failed to timely pay Plaintiff and the Subclass all
17 wages due upon termination or within seventy-two (72) hours of
18 resignation;
- 19 (i) Whether Defendants required Plaintiff and class members to incur
20 expenses for work and then failed to adequately reimburse Plaintiff and
21 Class Members for such expenses;
- 22 (j) Whether Defendants' conduct was willful or reckless; and
- 23 (k) Whether Defendants engaged in unfair business practices in violation of
24 Business and Professions Code §§ 17200, *et seq.*

25 25. There is a well-defined community of interest in this litigation and the proposed
26 Class and Subclass are readily ascertainable:

27 (a) Numerosity: The Class Members are so numerous that joinder of all
28 members is impractical. Although the members of the entire Class and Subclass are unknown

1 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
2 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
3 Defendants' employment and payroll records.

4 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
5 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
6 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
7 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
8 sustained by the Class Members, because they arise out of and are caused by Defendants'
9 common course of conduct as alleged herein.

10 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
11 interests of all Class Members because it is in his best interest to prosecute the claims alleged
12 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
13 attorneys, as proposed class counsel, are competent and experienced in litigating large
14 employment class actions and versed in the rules governing class action discovery,
15 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
16 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
17 for the prosecution of this action for the substantial benefit of the Class Members.

18 (d) Superiority: The nature of this action makes use of class action
19 adjudication superior to other methods. A class action will achieve economies of time, effort,
20 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
21 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
22 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
23 manage this case as a class action.

24 (e) Public Policy Considerations: Employers in the State of California
25 violate employment and labor laws every day. Current employees are often afraid to assert their
26 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
27 actions because they believe their former employers might damage their future endeavors
28 through negative references and/or other means. Class actions provide class members who are

1 not named in the complaint with a type of anonymity that allows for the vindication of their
2 rights while affording them privacy protections.

3 **GENERAL ALLEGATIONS**

4 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
5 California citizens as non-exempt employees at Defendants' California business location(s).

6 27. Defendants continue to employ non-exempt employees within California.

7 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
9 who were knowledgeable about California's wage and hour laws, employment and personnel
10 practices, and the requirements of California law.

11 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and Class Members were entitled to receive wages for all time
13 worked (including minimum and overtime wages) and that they were not receiving all wages
14 earned for work that was required to be performed due to off-the-clock work, and interrupted
15 meal periods, among other practices. In violation of the Labor Code and IWC Wage Orders,
16 Plaintiff and Class Members were not paid all wages (including minimum and overtime wages)
17 for all hours worked at the proper rates of pay.

18 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive overtime wages
20 and that they were not receiving all wages earned for work under Defendants' Alternative
21 Workweek Schedule. Plaintiff believes Defendants either failed to implement a proper
22 alternative workweek or failed to properly pay overtime under a valid Alternative Workweek
23 Schedule and thus owe Plaintiff and Class Members unpaid overtime.

24 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and Class Members were entitled to receive all required meal
26 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
27 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
28 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal

1 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
2 rate of pay when they did not receive a timely, uninterrupted meal period.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
6 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
7 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
8 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

9 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to reimbursement for
11 necessary expenditures incurred in connection with the performance and execution of their job
12 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
13 adequate reimbursement for necessary business expenses, including, but not limited to,
14 reimbursement for cell phone and personal vehicle use.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that the Class Members were entitled to receive itemized wage statements
17 that accurately showed the gross and net wages earned, total hours worked, all applicable
18 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
19 California law. In violation of the Labor Code, the Class Members were not provided with
20 accurate itemized wage statements.

21 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that the Waiting Time Subclass members were entitled to timely payment
23 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
24 Time Subclass did not receive payment of all wages within permissible time periods.

25 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known they had a duty to compensate Plaintiff and Class Members, and
27 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
28 intentionally failed to do so in order to increase Defendants' profits.

1 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
2 against Defendants on behalf of himself and all Class Members to recover, among other things,
3 unpaid wages (including minimum and overtime wages), meal period premium payments, rest
4 period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §§3-4)

8 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
9 though fully set forth herein.

10 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
11 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
12 wage than the minimum so fixed is unlawful.

13 40. During the relevant time period, Defendants paid Plaintiff and Class Members
14 less than the minimum wage when they failed to pay proper compensation for all hours worked.
15 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
16 Members were not being paid at least the minimum wage for their work.

17 41. During the relevant time period, Defendants regularly failed to pay at least the
18 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
19 §§ 1194 and 1197, as alleged herein.

20 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
21 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
22 Members are entitled to recover the unpaid balance of their minimum wage compensation as
23 well as interest, costs, and attorneys' fees.

24 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
25 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
26 interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 (Violation of Labor Code §§ 510, 511, 1194, and 1198; Violation of IWC Wage Order § 3)

4 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
7 unlawful to employ persons without compensating them at a rate of pay either one and one-half
8 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
11 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
12 and one-half times (1½) their regular rate of pay when working and for all hours worked in
13 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
14 eight (8) hours of work on the seventh day of work in a workweek.

15 47. The applicable IWC Wage Orders further provide that Defendants are and were
16 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
17 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
18 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

19 48. California Labor Code § 510 codifies the right to overtime compensation at one
20 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
21 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
22 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
23 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
24 seventh day of work in a workweek.

25 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
26 employment of more than six days in a workweek is only permissible if the employer pays
27 proper overtime compensation as set forth herein.
28

1 50. Plaintiff and Class Members were non-exempt employees entitled to the
2 protections of California Labor Code §§ 510 and 1194.

3 51. During the relevant time period, Defendants failed to pay Plaintiff and Class
4 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
5 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
6 day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve
7 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
8 week. To the extent these hours qualify for the payment of overtime, Plaintiff and Class
9 Members worked shifts of eight (8) hours or more without being paid proper overtime wages.

10 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
11 Members all wages owed when Defendants failed to properly implement an alternative
12 workweek election or failed to properly pay overtime wages under a valid alternative
13 workweek election.

14 53. In violation of state law, Defendants knowingly and willfully refused to perform
15 their obligations and compensate Plaintiff and Class Members for all wages earned and all
16 hours worked, as alleged herein.

17 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
18 overtime and double time compensation, as required by California law, violates the provisions
19 of Labor Code §§ 510 and 1198, and is therefore unlawful.

20 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
21 recover their unpaid overtime and double time compensation as well as interest, costs, and
22 attorneys' fees.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

26 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein
28

1 57. Labor Code § 226.7 provides that no employer shall require an employee to work
2 during any meal period mandated by the IWC Wage Orders.

3 58. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30 minutes, except that when a work period of not more than six (6) hours will
6 complete the day’s work the meal period may be waived by mutual consent of the employer and
7 the employee.”

8 59. Labor Code § 512(a) provides that an employer may not require, cause, or permit
9 an employee to work for a period of more than five (5) hours per day without providing the
10 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
11 the total work period per day of the employee is not more than six (6) hours, the meal period
12 may be waived by mutual consent of both the employer and the employee.

13 60. Labor Code § 512(a) also provides that an employer may not employ an
14 employee for a work period of more than ten (10) hours per day without providing the employee
15 with a second meal period of not less than thirty (30) minutes, except that if the total hours
16 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
17 consent of the employer and the employee only if the first meal period was not waived.

18 61. During the relevant time period, Plaintiff and Class Members did not receive
19 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
20 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

21 62. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
22 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
23 compensation for each work day that a compliant meal period is not provided.

24 63. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
25 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
26 and section 11 of the applicable IWC Wage Order.

27 ///

28 ///

1 64. As a result of Defendants' failure to pay Plaintiff and Class Members an
2 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
3 Class Members suffered and continue to suffer a loss of wages and compensation.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PERMIT REST BREAKS**

6 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

7 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 66. Labor Code § 226.7(a) provides that no employer shall require an employee to
10 work during any rest period mandated by the IWC Wage Orders.

11 67. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
13 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
14 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
15 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

16 68. During the relevant time period, Plaintiff and Class Members did not receive a
17 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
18 they were required to work through their daily rest periods and/or were not authorized to take
19 their rest periods.

20 69. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
21 requires an employer to pay an employee one (1) additional hour of pay at the employee's
22 regular rate of compensation for each work day that a compliant rest period is not provided.

23 70. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
24 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
25 226.7(b) and section 12 of the applicable IWC Wage Order.

26 71. As a result of Defendants' failure to pay Plaintiff and Class Members an
27 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
28 Members suffered and continue to suffer a loss of wages and compensation.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 (Violation of Labor Code § 226)

4 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 73. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including, the
8 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
9 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
10 basis, (4) all deductions, provided that all deductions made on written orders of the employee
11 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
12 period for which the employee is paid, (7) the name of the employee and the last four digits of
13 his or her social security number or an employee identification number other than a social
14 security number, (8) the name and address of the legal entity that is the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.

17 74. During the relevant time period, Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
19 Members. The deficiencies include, among other things, the failure to correctly state the gross
20 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
21 of hours worked at each hourly rate by the Class Members.

22 75. As a result of Defendants' knowing and intentional failure to comply with Labor
23 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
24 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
25 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
26 Members were denied both their legal right to receive, and their protected interest in receiving,
27 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
28 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur

1 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
2 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
3 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
4 Defendants.

5 76. The Class Members are entitled to recover from Defendants the greater of all
6 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
7 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
8 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
9 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

10 77. Defendants' violations of California Labor Code § 226(a) prevented the Class
11 Members from knowing, understanding, and disputing the wages paid to them and resulted in
12 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
13 intentional failure to comply with California Labor Code § 226(a), the Class Members have
14 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
15 proof at trial.

16 78. The Class Members are also entitled to injunctive relief under California Labor
17 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
18 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
19 obtaining this injunctive relief.

20 SIXTH CAUSE OF ACTION

21 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

22 (Violation of Labor Code §§ 201, 202, and 203)

23 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 80. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
26 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
27 if an employee voluntarily leaves his or her employment, his or her wages shall become due
28 and payable not later than seventy-two (72) hours thereafter, unless the employee has given

seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

81. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

82. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

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

84. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

85. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

86. Labor Code § 2800 states that an employer shall in all cases indemnify his employee for losses.

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87. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

88. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

89. During the relevant time period, Defendants required Plaintiff and class members to incur cell phone, and other expenses without properly compensating them for such expenses.

90. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

91. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

93. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

94. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

1 95. Defendants' policies and practices violated state law in at least the following
2 respects:

- 3 (a) Failing to pay all wages earned (including minimum wage and overtime
4 wages) to Plaintiff and Class Members in violation of Labor Code §§
5 204, 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;
- 6 (b) Failing to provide compliant meal periods without paying Plaintiff and
7 Class Members premium wages for every day said meal periods were not
8 provided in violation of Labor Code §§ 226.7 and 512;
- 9 (c) Failing to authorize or permit compliant rest breaks without paying
10 Plaintiff and Class Members premium wages for every day said rest
11 breaks were not authorized or permitted in violation of Labor Code §
12 226.7;
- 13 (d) Failing to provide the Class Members with accurate itemized wage
14 statements in violation of Labor Code § 226;
- 15 (e) Failing to timely pay all earned wages to the members of the Waiting
16 Time Subclass upon separation of employment in violation of Labor
17 Code §§ 201, 202, and 203; and
- 18 (f) Failing to reimburse business expenses in violation of Labor Code §§
19 2800 and 2802.

20 96. As alleged herein, Defendants systematically engaged in unlawful conduct in
21 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
22 (minimum and overtime wages), failing to provide meal periods and rest periods or
23 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
24 wages due and owing upon separation of employment in a timely manner, and failing to
25 reimburse business expenses, all in order to decrease their costs of doing business and increase
26 their profits.

27 ///

28 ///

1 97. At all relevant times herein, Defendants held themselves out to Plaintiff and
2 Class Members as being knowledgeable concerning the labor and employment laws of
3 California.

4 98. At the time Plaintiff and Class Members were hired, Defendants knowingly,
5 intentionally, and wrongfully misrepresented to each of them their conformance with the
6 California Labor Code and IWC Wage Orders, including proper payments required by law.

7 99. At all times relevant herein, Plaintiff and Class Members relied on and believed
8 Defendants' representations concerning their conformance with California's wage and hour
9 laws all to their detriment.

10 100. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
11 and Class Members wages and monies, thereby creating for Defendants an artificially lower
12 cost of doing business in order to undercut their competitors and establish and/or gain a greater
13 foothold in the marketplace.

14 101. As a result of Defendants' intentional, willful, purposeful, and wrongful
15 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
16 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
17 according to proof at trial.

18 102. By violating the foregoing statutes and regulations as herein alleged,
19 Defendants' acts constitute unfair and unlawful business practices under California Business
20 and Professions Code §§ 17200, *et seq.*

21 103. As a result of the unfair and unlawful business practices of Defendants, as
22 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
23 restitution in an amount to be shown according to proof at trial.

24 104. Plaintiff seeks to enforce important rights affecting the public interest within the
25 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
26 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
27 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
28

Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")

105. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

106. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

107. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

108. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

- a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;
- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged.

109. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

110. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

111. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

112. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

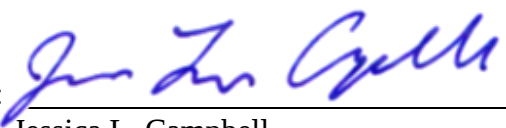
1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;

2. For appointment of Miguel A. Ramos as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, 2802(c), and 2698 *et seq.*; and
15. For such other relief as the Court deems just and proper.

Dated: April 6, 2022

AEGIS LAW FIRM, PC

By:


Jessica L. Campbell
Attorneys for Plaintiff Miguel A. Ramos

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

5 On April 6, 2022, I served the foregoing document entitled:

6 • **FIRST AMENDED CLASS ACTION COMPLAINT**

7 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
8 copy thereof on the party(ies) addressed below as follows:

9 Ryan L. Eddings
10 **LITTLER MENDELSON, P.C.**
11 5200 North Palm Avenue Suite 302
12 Fresno, California 93704-2225
13 Telephone: 559.244.7500
14 Fax No.: 559.244.7525
15 reddings@littler.com

16 *Attorneys for Defendant:*
17 ENTACT LLC

18 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with the U.S.
20 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
21 in the ordinary course of business. I am aware that on motion of the party served, service
22 is presumed invalid if postage cancellation date or postage meter date is more than one
23 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
24 *R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

25 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
26 practice of Aegis Law Firm PC for collection and processing correspondence for
27 overnight delivery, and I caused such document(s) described herein to be deposited for
28 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

29 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
30 electronic transmission via the above listed email addresses on the date below. (*Cal.*
31 *Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

32 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
33 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
34 5(b)(2)(A).)

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

37 Executed on April 6, 2022, at Irvine, California.

38 
Delaney Graves