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Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

Attorneys for Plaintiff Daniel Lopez

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

DANIEL LOPEZ, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

LG ELECTRONICS ALABAMA,
INC., an Alabama corporation; LG
ELECTRONICS U.S.A., INC., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: C22-01572

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Daniel Lopez, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on March 11, 2022, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Daniel Lopez is a resident of Walnut Creek, in Contra Costa County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
12 approximately April 2019 to January 2022. Plaintiff worked for Defendants as a Field Service
13 Technician traveling to various customer locations throughout Contra Costa County,
14 California. Plaintiff typically worked eight (8) or more hours per day and five (5) days per
15 week. At the time Plaintiff’s employment with Defendants ended, he was compensated
16 approximately \$29.63 per hour. Plaintiff’s job duties included, without limitation, traveling to
17 customer locations to perform maintenance and repair of appliances, conducting technical
18 diagnoses, documenting findings, repairing and/or replacing parts, and processing repair
19 paperwork.

20 7. LG ELECTRONICS ALABAMA, INC. was and is, upon information and
21 belief, an Alabama corporation, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county and the State of California.

23 8. LG ELECTRONICS U.S.A., INC. was and is, upon information and belief, a
24 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
25 are engaged throughout this county, the State of California.

26 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

capacities become known.

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of LG ELECTRONICS ALABAMA, INC. and LG ELECTRONICS U.S.A., INC., at all relevant times.

11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, LG ELECTRONICS ALABAMA, INC.; LG ELECTRONICS U.S.A., INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “LG”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

12. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

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

14. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party

1 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
2 available to Plaintiff and other non-party Aggrieved Employees under the law.

3 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
4 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
5 non-party Aggrieved Employees because Defendants have:

- 6 (a) jointly exercised meaningful control over the work performed by
7 Plaintiff and other non-party Aggrieved Employees;
- 8 (b) jointly exercised meaningful control over Plaintiff's and other non-party
9 Aggrieved Employees' wages, hours, and working conditions, including
10 the quantity, quality standards, speed, scheduling, and operative details
11 of the tasks performed by Plaintiff and other non-party Aggrieved
12 Employees;
- 13 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
14 perform work which is an integral part of Defendants' businesses; and
- 15 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
16 Employees as a matter of economic reality in that Plaintiff and other
17 non-party Aggrieved Employees were dependent on Defendants, who
18 shared the power to set the wages of Plaintiff and other non-party
19 Aggrieved Employees and determined their working conditions, and
20 who jointly reaped the benefits from the underpayment of their wages
21 and noncompliance with other statutory provisions governing their
22 employment.

23 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
24 there has existed a unity of interest and ownership between Defendants such that any
25 individuality and separateness between the entities has ceased.

26 17. LG ELECTRONICS ALABAMA, INC.; LG ELECTRONICS U.S.A., INC.;
27 and/or DOES 1 through 10 are therefore alter egos of each other.

28 18. Adherence to the fiction of the separate existence of Defendants would permit

1 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
2 from liability for the wrongful acts committed by them under the name LG.

3 19. Plaintiff further alleges, upon information and belief, that the Defendants LG
4 ELECTRONICS ALABAMA, INC. and LG ELECTRONICS U.S.A., INC. are alter egos of
5 each other for the following reasons:

- 6 (a) According to Dun & Bradstreet, LG ELECTRONICS ALABAMA,
7 INC. and LG ELECTRONICS U.S.A., INC. are subsidiaries of the
8 ultimate parent company LG Electronics Inc.;
- 9 (b) According to the LG Careers website ([https://lgcareers.com/individual-](https://lgcareers.com/individual-business-units/#lg-electronics-customer-service-lgeai)
10 [business-units/#lg-electronics-customer-service-lgeai](https://lgcareers.com/individual-business-units/#lg-electronics-customer-service-lgeai)), LG
11 ELECTRONICS ALABAMA, INC. and LG ELECTRONICS U.S.A.,
12 INC. are business units within LG Electronics Inc. LG ELECTRONICS
13 ALABAMA, INC. identifies under the electronic customer service
14 business unit and LG ELECTRONICS U.S.A., INC. identifies as the
15 North American business unit of LG Electronics Inc.; and
- 16 (c) On information and belief, LG ELECTRONICS ALABAMA, INC. and
17 LG ELECTRONICS U.S.A., INC. utilize the same standardized
18 employment forms, including, but not limited to, offer letters, disclosure
19 agreements, and confidentiality agreements, and issue the same
20 employment policies.

21 **PAGA REPRESENTATIVE ALLEGATIONS**

22 20. Defendants operate at least two locations in California and service several
23 counties throughout the state. Upon information and belief, Defendants maintain a single,
24 centralized Human Resources (HR) department at their corporate headquarters in Huntsville,
25 Alabama for all non-exempt, hourly paid employees working for Defendants in California,
26 which is responsible for the recruiting and hiring of new employees, and communicating and
27 implementing Defendants' company-wide policies, including timekeeping policies and meal
28 and rest period policies, to employees throughout California.

1 21. In particular, Plaintiff and other non-party Aggrieved Employees, on
2 information and belief, received the same standardized documents and/or written policies.
3 Upon information and belief, the usage of standardized documents and/or written policies,
4 including new-hire documents, indicate that Defendants dictated policies at the corporate level
5 and implemented them company-wide, regardless of their employees' assigned locations or
6 positions. Upon information and belief, Defendants set forth uniform policies and procedures
7 in several documents provided at an employee's time of hire.

8 22. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate headquarters in Huntsville, Alabama which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
12 upon information and belief, Defendants issue the same formatted wage statements to all non-
13 exempt, hourly paid employees in California, irrespective of their work locations. Upon
14 information and belief, Defendants process payroll for departing employees in the same
15 manner throughout the State of California, regardless of the manner in which each employee's
16 employment ends.

17 23. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
21 and advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
26 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
27 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
28 other non-party Aggrieved Employees were not provided with all meal periods or payment of

one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted

1 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
2 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
3 pay when they were not authorized and permitted to take a compliant rest period.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive certain wages for overtime compensation and that they were not receiving certain
7 wages for overtime compensation.

8 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
11 meal and rest period premiums, that included as eligible income all income derived from
12 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to
13 incorporate all forms of remuneration in calculating the regular rate of pay for Plaintiff and/or
14 other non-party Aggrieved Employees.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive at least minimum wages for compensation and that they were not receiving at least
18 minimum wages for work that was required to be done off-the-clock. In violation of the
19 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
20 least minimum wages for work done off-the-clock.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 receive complete and accurate wage statements in accordance with California law. In
24 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
25 were not provided complete and accurate wage statements.

26 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,

1 and intentionally failed to do so.

2 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 timely payment of wages during their employment. In violation of the California Labor Code,
5 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
6 including, but not limited to, overtime wages, minimum wages, meal and rest period
7 premiums, and/or sick leave pay, within permissible time periods.

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of all wages earned upon termination of employment. In violation of the
11 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
12 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
13 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

14 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
16 to receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible
17 income, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
18 of compensation, but failed to include all forms of remuneration in calculating the regular rate
19 of pay for sick leave pay.

20 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 receive reimbursement for all business-related expenses and costs they incurred during the
23 course and scope of their employment and that they did not receive reimbursement of
24 applicable business-related expenses and costs incurred.

25 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that Defendants had a duty to provide
27 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
28 of their employment with Defendants as required by the California Wage Theft Prevention

1 Act, but failed to do so.

2 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
4 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
5 life, safety, and health in the workplace, but failed to do so.

6 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to compensate
8 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
9 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
10 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
11 that they were properly denied wages, all in order to increase Defendants' profits.

12 42. At all times herein set forth, PAGA provides that any provision of law under
13 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
14 assessed and collected by the LWDA for violations of the California Labor Code and
15 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
16 civil action brought on behalf of themselves and other current or former employees pursuant
17 to procedures outlined in California Labor Code section 2699.3.

18 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
19 person who was employed by the alleged violator and against whom one or more of the
20 alleged violations was committed."

21 44. Plaintiff and other current and former employees of Defendants are "aggrieved
22 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
23 or former employees and one or more of the alleged violations were committed against them.

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

- 27 (a) The aggrieved employee shall give written notice by online filing
28 (hereinafter "Employee's Notice") to the LWDA and by certified mail

1 to the employer of the specific provisions of the California Labor Code
2 alleged to have been violated, including the facts and theories to support
3 the alleged violations.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(a) and any employer response to that notice shall be
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
8 employer and the aggrieved employee by certified mail that it does not
9 intend to investigate the alleged violation within sixty (60) calendar
10 days of the postmark date of the Employee's Notice. Upon receipt of
11 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
12 five (65) calendar days of the postmark date of the Employee's Notice,
13 the aggrieved employee may commence a civil action pursuant to
14 California Labor Code section 2699 to recover civil penalties in addition
15 to any other penalties to which the employee may be entitled.

16 46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
17 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
18 provision other than those listed in Section 2699.5 after the following requirements have been
19 met:

20 (a) The aggrieved employee or representative shall give written notice by
21 online filing to the LWDA and by certified mail to the employer of the
22 specific provisions of the California Labor Code alleged to have been
23 violated (other than those listed in Section 2699.5), including the facts
24 and theories to support the alleged violation.

25 (b) An aggrieved employee's notice filed with the LWDA pursuant to
26 2699.3(c) and any employer response to that notice shall be
27 accompanied by a filing fee of seventy-five dollars (\$75).

28 (c) The employer may cure the alleged violation within thirty-three (33)

1 calendar days of the postmark date of the notice. The employer shall
2 give written notice by certified mail within that period of time to the
3 aggrieved employee or representative and the agency if the alleged
4 violation is cured, including a description of actions taken, and no civil
5 action pursuant to Section 2699 may commence. If the alleged violation
6 is not cured within the 33-day period, the employee may commence a
7 civil action pursuant to Section 2699.

8 47. On March 11, 2022, Plaintiff provided written notice by online filing to the
9 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
10 Code alleged to have been violated, including facts and theories to support the alleged
11 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
12 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
13 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
14 Plaintiff PAGA Case Number LWDA-CM-873095-22. A true and correct copy of Plaintiff's
15 written notice to the LWDA and Defendants dated March 11, 2022, is attached hereto as
16 "Exhibit 1."

17 48. As of the filing date of this complaint, over 65 days have passed since Plaintiff
18 sent the written notice described above, and the LWDA has not responded that it intends to
19 investigate Plaintiff's claims, and Defendants have not cured the violations.

20 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
21 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
22 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
23 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

24 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
25 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the Industrial Welfare
27 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
28 dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
3 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
4 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
5 as a private attorney general, seeks assessment and collection of civil penalties under Labor
6 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
7 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
8 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
9 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
10 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
11 applicable IWC Wage Order.

12 51. Defendants, at all times relevant to this complaint, were employers or persons
13 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
14 Employees’ rights by violating various sections of the California Labor Code as set forth
15 above.

16 52. As set forth below, Defendants have violated numerous provisions of both the
17 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
18 Order.

19 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
21 private attorney general, seeks assessment and collection of civil penalties for himself, all
22 other non-party Aggrieved Employees, and the State of California against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
24 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

25 **FIRST CAUSE OF ACTION**

26 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

27 **(Against all Defendants)**

28 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 55. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
5 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
6 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
7 those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12,
8 2810.5, 6401, and 6403.

9 56. Defendants’ conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
12 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
13 and other non-party Aggrieved Employees with meal periods, as set
14 forth below;
- 15 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the
16 applicable IWC Wage Order for Defendants’ failure to authorize and
17 permit Plaintiff and other non-party Aggrieved Employees to take rest
18 periods, as set forth below;
- 19 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
20 Wage Order for Defendants’ failure to compensate Plaintiff and other
21 non-party Aggrieved Employees with all required overtime pay, as set
22 forth below;
- 23 (d) Violation of Labor Code sections 226.7, 510, and 1198, and the
24 applicable IWC Wage Order for Defendants’ failure to include all forms
25 of remuneration in the “regular rate” of pay as required by law for
26 purposes of paying overtime wages and/or meal and rest period
27 premiums to Plaintiff and other non-party Aggrieved Employees, as set
28 forth below;

- (e) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code sections 246 for failure to pay Plaintiff and other non-party Aggrieved Employees sick leave at the correct rates of pay, as set forth below;
- (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below;
- (l) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below; and
- (m) Violation of Labor Code section 6401 and 6403 for failure to provide safety devices and safeguards, as set forth below.

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

57. At all relevant times herein set forth, the applicable IWC Wage Order and

California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

58. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

59. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

60. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

61. First, during the relevant time period, Defendants have systematically, and on a company-wide basis, assigned heavy workloads and deadlines, which prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. Defendants had, and continue to have, a company-wide practice of scheduling 4-6 appliance repair appointments in one day, which Plaintiff and other non-party Aggrieved Employees were expected to complete by the end of their scheduled shifts. Defendants also set limited windows of time to arrive at appointments, and scheduled a heavier workload for employees in the earlier half of the day. Moreover, Defendants had, and continue to have, company-wide policies and/or practices of utilizing customer service

1 satisfaction reports and surveys, among other metrics, which directly impacted Plaintiff's and
2 other non-party Aggrieved Employees' eligibility for bonuses. As a result, Defendants
3 required Plaintiff and other non-party Aggrieved Employees to complete scheduled customer
4 appliance repairs and meet arrival time deadlines, even at the cost of forgoing meal periods, in
5 order to meet Defendants' productivity expectations. Defendants also had a practice of failing
6 to schedule and/or failing to adhere to a schedule for meal periods, which further caused
7 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for
8 compliant meal periods.

9 62. For example, Plaintiff was required to complete scheduled appliance repairs,
10 limit the window of arrival time between repair appointments, and attend to "high-value" or
11 priority customers, all in the same day. As a result, on several occasions, Plaintiff worked
12 through his meal period in order to complete all scheduled repair appointments in a timely
13 manner and reduce customer service response times, in order to meet Defendants' productivity
14 expectations, receive a favorable customer service report, and increase his bonus earnings.
15 Furthermore, as stated, Defendants would assign Plaintiff a heavier workload during the first
16 half of his shift by scheduling more appointments, which led to Plaintiff clocking out for his
17 meal period and continue working in order to complete appliance repairs and avoid meal
18 period premiums. For example, Plaintiff took his meal periods late, after having worked in
19 excess of five (5) hours into his shift, four (4) times a week to limit the window of arrival time
20 between appliance repair appointments and attend to high-value customers. As a result,
21 Plaintiff and other non-party Aggrieved Employees were not always afforded 30-minute meal
22 periods during shifts when they were entitled to receive a meal period and instead continued to
23 work during unpaid meal periods.

24 63. Second, Defendants had, and continue to have, a company-wide policy and/or
25 practice of requiring Plaintiff and other non-party Aggrieved Employees carry a company-
26 issued mobile device to respond to requests from management and customers at all times,
27 including during meal periods. Defendants pressured Plaintiff and other non-party Aggrieved
28 Employees to respond to such calls, as customer service response time was another metric for

1 bonus eligibility. For example, Plaintiff's meal periods were interrupted or cut short by
2 customers and Defendants' managers calling him to discuss appliance parts, scheduled repairs,
3 and other work-related tasks.

4 64. Third, because Defendants frowned upon employees accruing meal period
5 penalties, Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock
6 out for meal periods, regardless of whether they had received a compliant meal period, in
7 order to strictly limit meal penalties that would need to be paid by Defendants. For example,
8 Plaintiff was pressured by Defendants' management to clock out and record compliant meal
9 periods, before the fifth hour of work, during shifts when he did not, in fact, receive a
10 compliant meal period. If Plaintiff did not clock out prior to the fifth hour, Defendants further
11 pressured Plaintiff to provide time corrections in order to reflect compliant meal periods.

12 65. Furthermore, during the relevant time period, Plaintiff and other non-party
13 Aggrieved Employees worked shifts in excess of ten (10) hours without receiving an
14 uninterrupted second 30-minute meal period. For example, during his employment, Plaintiff
15 worked shifts in excess of ten (10) or more hours per day, but was never provided a second
16 30-minute meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid
17 meal period waivers on days that they were entitled to meal periods and were not relieved of
18 all duties.

19 66. At all times mentioned herein, Defendants knew or should have known that as a
20 result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually
21 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
22 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
23 meal period premiums when meal periods were late, interrupted, shortened, or missed.

24 67. Furthermore, Defendants engaged in a company-wide practice and/or policy of
25 not paying all meal period premiums owed when compliant meal periods are not provided.
26 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
27 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
28 to the extent that Defendants did pay meal period premiums to Plaintiff and other non-party

1 Aggrieved Employees, they did so at the incorrect rates. In addition to an hourly wage,
2 Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay,
3 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
4 California Labor Code, because Defendants did not properly calculate Plaintiff's and other
5 non-party Aggrieved Employees' regular rates of pay by including all remunerations, such as
6 incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations
7 were also paid at an incorrect rate and resulted in an underpayment of meal period premiums.
8 As a result, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees
9 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
10 and failed to pay the full meal period premiums due.

11 68. Defendants' conduct violates the applicable IWC Wage Order, and California
12 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
13 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
14 558 and/or 2699(a), (f), and (g).

15 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

16 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

17 69. At all relevant times herein set forth, the applicable IWC Wage Order and
18 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
19 non-party Aggrieved Employees' employment by Defendants.

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

26 71. At all relevant times, California Labor Code section 226.7 provides that no
27 employer shall require an employee to work during any rest period mandated by an applicable
28 order of the California IWC. To comply with its obligation to authorize and permit rest

1 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
2 employer must “relinquish any control over how employees spend their break time, and
3 relieve their employees of all duties—including the obligation that an employee remain on
4 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
5 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

6 72. Pursuant to the applicable IWC Wage Order and California Labor Code section
7 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
8 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
9 required rest period was not authorized and permitted.

10 73. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
12 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
13 Defendants’ company-wide practices of assigning heavy workloads and deadlines prevented
14 Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take
15 their rest periods. Also, as stated, Defendants would schedule more appointments during the
16 first half of Plaintiff’s shift, which led to him missing rest periods earlier in the day in order to
17 complete appliance repairs and meet Defendants’ expectations. Additionally, Defendants
18 failed to schedule rest periods, which further led to Plaintiff and other non-party Aggrieved
19 Employees not being authorized and permitted to take compliant rest periods. Moreover, as
20 stated, Defendants had, and continue to have, a policy and/or practice of requiring that
21 Plaintiff and other non-party Aggrieved Employees carry a company-issued mobile device to
22 respond to requests from management and customers at all times, including during rest
23 periods, in order to meet Defendants’ expectations.

24 74. Furthermore, upon information and belief, Defendants maintained a company-
25 wide on-premises rest period policy, which effectively required that Plaintiff and other non-
26 party Aggrieved Employees remain on or near the work premises during their rest periods.
27 Because Plaintiff and other non-party Aggrieved Employees received phone calls from
28 management and customers on their company-provided mobile devices during rest periods,

1 they were denied the ability to use their rest periods freely for their own purposes, such as
2 running personal errands. Thus, Defendants effectively maintained control over Plaintiff and
3 other non-party Aggrieved Employees during rest periods.

4 75. As a result of Defendants' practices and policies, Plaintiff and other non-party
5 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
6 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
7 were entitled. For example, Plaintiff missed his rest periods to complete scheduled appliance
8 repairs within allotted time windows and meet customer demand. As stated, Plaintiff's rest
9 periods were also interrupted by Defendants' managers calling him to discuss appliance parts,
10 scheduled repairs, and other work-related tasks.

11 76. Defendants have also engaged in a systematic, company-wide practice and/or
12 policy of not paying rest period premiums owed when rest periods are not authorized and
13 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
14 Employees have not received premium pay for all missed rest periods. Alternatively, to the
15 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
16 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
17 other non-party Aggrieved Employees at the correct rate of pay for premiums because
18 Defendants failed to include all forms of compensation, such as incentive pay,
19 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

20 77. Accordingly, Defendants failed to authorize and permit all compliant rest
21 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
22 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY OVERTIME**

26 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

27 78. Labor Code section 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code

1 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
2 be the . . . standard conditions of labor for employees. The employment of any employee . . .
3 under conditions of labor prohibited by the order is unlawful.”

4 79. California Labor Code section 1198 and the applicable IWC Wage Order
5 provide that it is unlawful to employ persons without compensating them at a rate of pay
6 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
7 number of hours worked by the person on a daily or weekly basis.

8 80. Specifically, the applicable IWC Wage Order provides that Defendants are and
9 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
10 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
11 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
12 (40) hours in a workweek.

13 81. The applicable IWC Wage Order further provides that Defendants are and were
14 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
15 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
16 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
17 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

18 82. California Labor Code section 510 codifies the right to overtime compensation
19 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
20 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
21 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
22 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
23 in a day on the seventh (7th) day of work.

24 83. During the relevant time period, Defendants willfully failed to pay all overtime
25 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
26 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
27 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
28 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were

1 not recorded.

2 84. First, as set forth above, during the relevant time period, Defendants had, and
3 continue to have, company-wide policies and/or practices of assigning heavy workloads and
4 deadlines, which prevented Plaintiff and other non-party Aggrieved Employees from taking
5 all timely, uninterrupted meal periods to which they were entitled. As stated, Defendants
6 required Plaintiff and other non-party Aggrieved Employees to complete scheduled customer
7 appliance repairs and meet arrival time deadlines, even at the cost of forgoing meal periods, in
8 order to meet Defendants' productivity expectations. Defendants had, and continue to have, a
9 company-wide policy and/or practice of failing to schedule and/or failing to adhere to a
10 schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved
11 Employees to not be relieved of their duties for compliant meal periods. Additionally,
12 Plaintiff would sometimes answer phone calls from Defendants' management, other
13 coworkers, or customers on his company-provided mobile device or cellular phone during
14 unpaid meal periods. Consequently, Plaintiff and other non-party Aggrieved Employees were
15 required to work through and/or had their unpaid meal periods interrupted in order to
16 complete their assigned duties, time for which they were not paid.

17 85. As also stated above, because Defendants frowned upon employees accruing
18 meal period penalties, Defendants pressured Plaintiff and other non-party Aggrieved
19 Employees to clock out for meal periods, regardless of whether they had received a compliant
20 meal period, in order to strictly limit meal penalties that would need to be paid by Defendants.
21 For example, Plaintiff was pressured by Defendants' management to clock out and record
22 compliant meal periods during shifts when he would not, in fact, receive a compliant meal
23 period. Thus, Defendants did not record all hours worked during meal periods, and Plaintiff
24 and other non-party Aggrieved Employees performed work during meal periods for which
25 they were not paid.

26 86. Second, during the relevant period, Defendants had, and continue to have, a
27 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
28 Employees from recording hours worked that were outside of their scheduled shifts in order to

1 limit the amount of overtime employees could accrue. This policy of limiting overtime,
2 coupled with Defendants' reducing and/or eliminating employees' eligibility for monthly
3 bonuses when certain tiers of overtime hours were accrued, led Plaintiff and other non-party
4 Aggrieved Employees to work off-the-clock before and after their scheduled shift times. For
5 example, prior to Plaintiff's scheduled shift start-time, he would answer emails, pre-screen
6 calls, and order appliance parts and load them into his vehicle. As a further example, at the
7 end of Plaintiff's scheduled shift end-time, he would clock out and then answer emails,
8 communicate with management, pack up and send unused parts, dispose of parts, and wash
9 and maintain his work vehicle. When this occurred, Plaintiff was pressured to not record this
10 off-the-clock time worked, in order to minimize overtime hours accrued and thereby remain
11 eligible for a bonus.

12 87. This off-the-clock work could have been recorded by Defendants, but they
13 refused to do so to avoid payment of additional wages to Plaintiff and other non-party
14 Aggrieved Employees. Thus, Defendants failed to track all of the time that employees spent
15 performing work-related tasks before and after their scheduled shifts, and Plaintiff and other
16 non-party Aggrieved Employees received no compensation for this time.

17 88. Defendants knew or should have known that, as a result of these company-wide
18 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
19 their assigned duties during meal periods and while off-the-clock, and were suffered or
20 permitted to perform work for which they were not paid. Because Plaintiff and other non-
21 party Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty (40) hours
22 a week or more, some of this off-the-clock work qualified for overtime premium pay.
23 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
24 for all of the overtime hours they actually worked.

25 89. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
26 correct overtime rates for the recorded overtime hours that they generated. In addition to an
27 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
28 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the

California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

90. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1 AND 1198

91. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

92. As set forth above, due to Defendants' company-wide practices of assigning heavy workloads, deadlines, and failure to schedule and/or adhere to a schedule for meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Additionally, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. As stated, because Defendants discouraged and impeded Plaintiff and other non-party Aggrieved Employees from recording hours worked

1 that were outside of their scheduled shifts, Plaintiff and other non-party Aggrieved Employees
2 were required to perform work off-the-clock before and after their scheduled shift start and
3 end times, including answering emails, pre-screening calls, ordering parts, communicating
4 with management, packing up and sending unused parts, disposing of parts, and washing their
5 work vehicles.

6 93. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
7 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
8 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
9 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
10 1194, 1197, 1197.1, and 1198.

11 94. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
12 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1 and
13 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
14 civil penalties pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
16 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

17 95. At all relevant times herein, California Labor Code section 226(a) provides that
18 every employer shall furnish each of his or her employees an accurate and complete itemized
19 wage statement in writing, including, but not limited to, the name and address of the legal
20 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
21 applicable rates of pay.

22 96. During the relevant time period, Defendants have knowingly and intentionally
23 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
24 inaccurate wage statements. For example, Defendants issued uniform wage statements to
25 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
26 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
27 the pay period, including rates of pay for overtime wages, meal and rest period premiums,
28 and/or paid sick leave, and the corresponding number of hours worked at each hourly rate.

Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

97. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

98. Additionally, because Defendants did not calculate Plaintiff's and/or other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums and/or paid sick leave, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

99. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

100. California Labor Code section 1174(d) provides that "[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

101. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

102. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

1 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

4 103. At all relevant times herein set forth, California Labor Code section 204
5 requires that all wages earned by any person in any employment between the 1st and the 15th
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the 16th and the 26th day of the month during which
8 the labor was performed. Labor Code section 204 further provides that all wages earned by
9 any person in any employment between the 16th and the last day, inclusive, of any calendar
10 month, other than those wages due upon termination of an employee, are due and payable
11 between the 1st and the 10th day of the following month.

12 104. At all relevant times herein, California Labor Code section 204 also requires
13 that all wages earned for labor in excess of the normal work period shall be paid no later than
14 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
15 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
16 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
17 more than seven (7) calendar days following the close of the payroll period.

18 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 other non-party Aggrieved Employees all wages due to them within any time period specified
20 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
21 wages, meal and rest period premiums, and/or sick leave pay.

22 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES UPON TERMINATION**

25 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

26 107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
27 that if an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 108. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
6 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
7 above, including but not limited to, overtime wages, minimum wages, meal and rest period
8 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
9 hours of their leaving Defendants' employ.

10 109. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
11 who are no longer employed by Defendants their wages earned and unpaid at the time of
12 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
13 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
14 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE PAID SICK LEAVE BENEFITS**

17 **VIOLATION OF LABOR CODE SECTION 246**

18 110. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
19 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
20 days from the commencement of employment with paid sick days, to be accrued at least one
21 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
22 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
23 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
24 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
25 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
26 the same manner as the regular rate of pay for the workweek in which the employee uses paid
27 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
28 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's

total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

111. During the relevant time period, Defendants did not pay Plaintiff and other non-party Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

112. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other non-party Aggrieved Employees on a company-wide basis in violation of Labor Code 246(l).

113. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

114. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an

1 employee whose wages are at least two (2) times the minimum wage provided herein may be
2 required to provide and maintain hand tools and equipment customarily required by the trade
3 or craft.”

4 115. First, during the relevant time period, Defendants, on a company-wide basis,
5 required Plaintiff and other non-party Aggrieved Employees to utilize their own personal
6 mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out
7 their job duties, but Defendants failed to reimburse them for the costs of their work-related
8 mobile device expenses. Although Plaintiff and other non-party Aggrieved Employees were
9 provided company-issued mobile devices, such as cellular phones, there were occasions when
10 the company phones did not have sufficient reception. Since Plaintiff and other non-party
11 Aggrieved Employees did not work in an office setting, they had no access to additional
12 communication devices other than their own. Plaintiff and other non-party Aggrieved
13 Employees were required to use their personal mobile devices for work-related tasks,
14 including responding to calls or text messages from Defendants’ management. For example,
15 Plaintiff used his personal cellular phone to communicate with Defendants, navigate to
16 scheduled appliance repairs, and create a WiFi access point for company mobile devices.
17 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
18 their personal mobile devices and/or mobile data to carry out their work-related duties,
19 Defendants failed to reimburse them for these costs.

20 116. Second, during the relevant time period, Defendants had a company-wide
21 policy of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own
22 personal vehicles or obtain alternate transportation to carry out company business, but failed
23 to reimburse them for all costs of travel, including mileage. For example, Plaintiff was
24 required to drive 30 miles, three (3) times a week, for two (2) months while undergoing
25 training. Although Defendants required Plaintiff and other non-party Aggrieved Employees to
26 use their own personal vehicles or obtain alternate transportation to complete their work-
27 related duties, Defendants did not reimburse them for their travel expenses.

28 117. Third, during the relevant time period, Defendants, on a company-wide basis,

1 forced Plaintiff and other non-party Aggrieved Employees to purchase tools, supplies and/or
2 other equipment necessary for the completion of their work-related duties. For example, due
3 to COVID-19, Plaintiff was required to spend approximately \$40.00 on face masks to wear
4 because Defendants required face masks to be worn during work. Although Defendants
5 required Plaintiff and other non-party Aggrieved Employees to purchase and use their own
6 tools, supplies, and/or equipment in the performance of their duties, Defendants did not
7 reimburse them for these expenses.

8 118. Defendants could have provided Plaintiff and other non-party Aggrieved
9 Employees with the actual tools for use on the job, such as working company mobile devices
10 and company vehicles, and supplies, tools, and/or equipment. Or, Defendants could have
11 reimbursed employees for their mobile device usage; travel expenses; mileage; and tool,
12 supply, and/or equipment expenses. Instead, Defendants passed these operating costs off onto
13 Plaintiff and other non-party Aggrieved Employees.

14 119. Defendants' company-wide policy and/or practice of not reimbursing
15 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
16 and other non-party Aggrieved Employees violates California Labor Code section 2802.
17 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
20 **EMPLOYMENT**

21 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

22 120. California's Wage Theft Prevention Act was enacted to ensure that employers
23 provide employees with basic information material to their employment relationship at the
24 time of hiring, and to ensure that employees are given written and timely notice of any
25 changes to basic information material to their employment. Codified at California Labor
26 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
27 employer must provide written notice to employees containing basic and material payroll
28 information, including, among other things, the rate(s) of pay and basis thereof, whether paid

1 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
2 overtime, the regular payday designated by the employer, and any allowances claims as part
3 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
4 (C).

5 121. During the relevant time period, Defendants failed to provide Plaintiff and
6 other non-party Aggrieved Employees with written notice that lists all the requisite
7 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

8 122. Defendants' failure to provide Plaintiff and other non-party Aggrieved
9 Employees with written notice of basic information regarding their employment with
10 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
11 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
12 Code sections 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

14 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

15 123. At all relevant times herein, California Labor Code section 6401 provides that
16 employers must furnish and use safety devices and safeguards, and adopt and use practices,
17 means, methods, operations, and processes which are reasonably adequate to render the
18 employment and place of employment safe and healthy. California Labor Code Section 6401
19 further provides that an employer must do everything reasonably necessary to protect the life,
20 safety and health of its employees. California Labor Code section 6403(a) requires that
21 employers provide and use safety devices and safeguards reasonably adequate to render the
22 employment and place of employment safe.

23 124. During the relevant period, as stated, Defendants failed to provide Plaintiff and
24 other non-party Aggrieved Employees with personal protective equipment, such as gloves and
25 face masks, to keep them safe in the workplace. Despite the fact that Defendants required
26 Plaintiff and other non-party Aggrieved Employees to wear certain personal protective
27 equipment, as facial coverings and/or masks to keep them safe in the workplace, Defendants
28 failed to fully provide such reasonably necessary equipment to Plaintiff and other non-party

1 Aggrieved Employees to keep them safe.

2 125. Defendants' failure to provide Plaintiff and other non-party Aggrieved
3 Employees with safety devices and safeguards for the workplace violates Labor Code sections
4 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are entitled to recover
5 civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
10 judgment against Defendants, jointly and severally, as follows:

11 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
12 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
13 amount.

14 **As to the First Cause of Action**

15 2. That the Court declare, adjudge and decree that Defendants violated the
16 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
17 Employees: 226.7, 512(a), 516, 1198 (by failing to provide all meal periods); 226.7, 516, and
18 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all
19 overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
20 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
21 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
22 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
23 termination); 246 (by failing to provide sick leave benefits); 2802 (by failing to reimburse
24 business expenses); 2810.5 (by failing to provide written notice of information material to
25 employment); and 6401 and 6403 (by failing to provide safety devices and safeguards).

26 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
27 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
28 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,

1 1198, 2802, 2810.5, 6401, and 6403;

2 4. For attorneys' fees and costs pursuant to California Labor Code section
3 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
4 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),
5 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

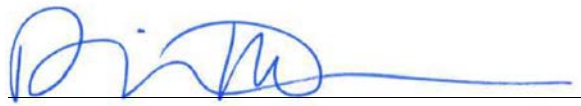
6 5. For pre-judgment and post-judgment interest as provided by law; and

7 6. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: August 1, 2022

Respectfully submitted,

11 Capstone Law APC

12
13 By: 

14 Mark A. Ozzello
15 Brandon K. Brouillette
16 Joseph Hakakian

17 Attorneys for Plaintiff Daniel Lopez
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EXHIBIT 1



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March 11, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Daniel Lopez v. LG Electronics Alabama, Inc., et al.*

Dear PAGA Administrator:

This office represents Daniel Lopez in connection with his claims under the California Labor Code. Mr. Lopez was an employee of LG ELECTRONICS ALABAMA, INC. and/or LG ELECTRONICS U.S.A., INC. For the purpose of this letter, Mr. Lopez collectively refers to these entities as "LGE."

The employers may be contacted directly at the addresses below:

LG ELECTRONICS ALABAMA, INC.
201 JAMES RECORD RD
HUNTSVILLE AL 35824

LG ELECTRONICS U.S.A., INC.
111 SYLVAN AVENUE
ENGLEWOOD CLIFFS NJ 07632

Mr. Lopez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Lopez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by LGE in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

LGE employed Mr. Lopez as a non-exempt, hourly paid Field Service Technician from approximately April 2019 to January 2022. Mr. Lopez worked for LGE traveling to various customer locations throughout Contra Costa County, California. He typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment ended, Mr. Lopez was compensated approximately \$29.63 per hour. His job duties included, without limitation, traveling to customer locations to perform maintenance and repair of appliances, conducting technical diagnoses, documenting findings, repairing and/or replacing parts, and processing repair paperwork.

LGE has committed one or more of the following Labor Code violations against Mr. Lopez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor

Code section 2699(c):¹

LGE's Company-Wide and Uniform Payroll and HR Practices

LG ELECTRONICS ALABAMA, INC. is an Alabama corporation, while LG ELECTRONICS U.S.A., INC. is a Delaware corporation. Upon information and belief, LGE operates at least two locations in California and services several counties throughout the state. Upon information and belief, LGE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Huntsville, Alabama, for all non-exempt, hourly paid employees working for LGE in California, including Mr. Lopez and other aggrieved employees. At all relevant times, LGE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lopez and other aggrieved employees, regardless of their location or position.

Upon information and belief, LGE maintains a centralized Payroll department at its corporate headquarters in Huntsville, Alabama, which processes payroll for all non-exempt, hourly paid employees working for LGE in California, including Mr. Lopez and other aggrieved employees. Further, LGE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Lopez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, LGE utilized the same methods and formulas when calculating wages due to Mr. Lopez and other aggrieved employees in California.

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

¹ These facts, theories, and claims are based on Mr. Lopez's experience and counsel's review of those records currently available relating to Mr. Lopez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Lopez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, LGE has systematically, and on a company-wide basis, assigned heavy workloads and deadlines, which prevented Mr. Lopez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. LGE had, and continues to have, a company-wide practice of scheduling 4-6 appliance repair appointments in one day, which Mr. Lopez and other aggrieved employees were expected to complete by the end of their scheduled shifts. LGE also set limited windows of time to arrive at appointments, and scheduled a heavier workload for employees in the earlier half of the day. Moreover, LGE had, and continues to have, company-wide policies and/or practices of utilizing customer service satisfaction reports and surveys, among other metrics, which directly impacted Mr. Lopez's and other aggrieved employees' eligibility for bonuses. As a result, LGE required Mr. Lopez and other aggrieved employees to complete scheduled customer appliance repairs and meet arrival time deadlines, even at the cost of forgoing meal periods, in order to meet LGE's productivity expectations. LGE also had a practice of failing to schedule and/or failing to adhere to a schedule for meal periods, which further caused Mr. Lopez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

For example, Mr. Lopez was required to complete scheduled appliance repairs, limit the window of arrival time between repair appointments, and attend to "high-value" or priority customers, all in the same day. As a result, on several occasions, Mr. Lopez worked through his meal period in order to complete all scheduled repair appointments in a timely manner and reduce customer service response times, in order to meet LGE's productivity expectations, receive a favorable customer service report, and increase his bonus earnings. Furthermore, as stated, LGE would assign Mr. Lopez a heavier workload during the first half of his shift by scheduling more appointments, which led to Mr. Lopez clocking out for his meal period and continue working in order to complete appliance repairs and avoid meal period premiums. For example, Mr. Lopez took his meal periods late, after having worked in excess of five (5) hours into his shift, four (4) times a week to limit the window of arrival time between appliance repair appointments and attend to high-value customers. As a result, Mr. Lopez and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period and instead continued to work during unpaid meal periods.

Second, LGE had, and continues to have, a company-wide policy and/or practice of requiring Mr. Lopez and other aggrieved employees carry a company-issued mobile device to respond to requests from management and customers at all times, including during meal periods. LGE pressured Mr. Lopez and other aggrieved employees to respond to such calls, as customer service response time was another metric for bonus eligibility. For example, Mr. Lopez's meal periods were interrupted or cut short by customers and LGE's managers calling him to discuss appliance parts, scheduled repairs, and other work-related tasks.

Third, because LGE frowned upon employees accruing meal period penalties, LGE pressured Mr. Lopez and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by LGE. For example, Mr. Lopez was pressured by LGE's management to clock out and record compliant meal periods, before the fifth hour of work, during shifts when he did not, in fact, receive a compliant meal period. If Mr. Lopez did not clock out prior to the fifth hour, LGE further pressured Mr. Lopez to provide time corrections in order to reflect compliant meal periods.

As a result, Mr. Lopez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

Also, LGE did not provide Mr. Lopez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during his employment, Mr. Lopez worked shifts in excess of ten (10) or more hours per day, but was never provided a second 30-minute meal period. Mr. Lopez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, LGE knew or should have known that as a result of its policies, Mr. Lopez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. LGE further knew or should have known that it did not pay Mr. Lopez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, LGE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Lopez and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that LGE did pay meal period premiums to Mr. Lopez and other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, LGE paid Mr. Lopez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because LGE did not properly calculate Mr. Lopez's and other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premiums.

Accordingly, LGE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lopez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, LGE regularly failed to authorize and permit Mr. Lopez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LGE's policies and/or practices of assigning heavy workloads and deadlines prevented Mr. Lopez and other aggrieved employees from being relieved of all duty to take their rest periods. Also, as stated, LGE would schedule more appointments during the first half of Mr. Lopez's shift, which led to him missing rest periods earlier in the day in order to complete appliance repairs and meet LGE's expectations. Additionally, LGE failed to schedule rest periods, which further led to Mr. Lopez and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, as stated, LGE had, and continues to have, a policy and/or practice of requiring that Mr. Lopez and other aggrieved employees carry a company-issued mobile device to respond to requests from management and customers at all times, including during rest periods, in order to meet LGE's expectations.

Furthermore, upon information and belief, LGE maintained a company-wide on-premises rest period policy, which mandated that Mr. Lopez and other aggrieved employees remain on or near LGE's premises during their rest periods. Because Mr. Lopez and other aggrieved employees received phone calls from management and customers on their company-provided mobile devices during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, LGE effectively maintained control over Mr. Lopez and other aggrieved employees during rest periods.

As a result of LGE's practices and policies, Mr. Lopez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Lopez missed his rest periods to complete scheduled appliance repairs within allotted time windows and meet customer demand. As stated, Mr. Lopez's rest periods were also interrupted by LGE's managers calling him to discuss appliance parts, scheduled repairs, and other work-related tasks.

LGE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Lopez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that LGE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, LGE did not pay other aggrieved employees at the correct rate of pay for premiums because LGE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LGE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lopez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

LGE willfully failed to pay all overtime wages owed to Mr. Lopez and other aggrieved employees. During the relevant time period, Mr. Lopez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, LGE had a company-wide policy and/or practice of assigning heavy workloads and deadlines, which prevented Mr. Lopez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As stated, LGE required Mr. Lopez and other aggrieved employees to complete scheduled customer appliance repairs and meet arrival time deadlines, even at the cost of forgoing meal periods, in order to meet LGE's productivity expectations. LGE had, and continues to have, a company-wide policy and/or practice of failing to schedule and/or failing to adhere to a schedule for meal periods, which further caused Mr. Lopez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, Mr. Lopez would sometimes answer phone calls from LGE's management, other coworkers, or customers on his company-provided mobile device or cellular phone during unpaid meal periods. Consequently, Mr. Lopez and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

As also stated above, because LGE frowned upon employees accruing meal period penalties, LGE pressured Mr. Lopez and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by LGE. For example, Mr. Lopez was pressured by LGE's management to clock out and record compliant meal periods during shifts when he would not, in fact, receive a compliant meal period. Thus, LGE did not record all hours worked during meal periods, and Mr. Lopez and other aggrieved employees performed work during meal periods for which they were not paid.

Second, during the relevant period, LGE had, and continues to have, a company-wide policy of discouraging and impeding Mr. Lopez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with LGE reducing and/or eliminating employees' eligibility for monthly bonuses when certain tiers of overtime hours were accrued, led Mr. Lopez and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, prior to Mr. Lopez's scheduled shift start-time, he would answer emails, pre-screen calls, and order appliance parts and load them into his vehicle. As a further example, at the end of Mr. Lopez's scheduled shift end-time, he would clock out and then answer emails, communicate with management, pack up and send unused parts, dispose of parts, and wash and maintain his work vehicle. When this occurred, Mr. Lopez was pressured to not record this off-the-clock time worked, in order to minimize overtime hours accrued and thereby remain eligible for a bonus.

This off-the-clock work could have been recorded by LGE, but it refused to do so to avoid payment of additional wages to Mr. Lopez and other aggrieved employees. Thus, LGE failed to track all of the time that employees spent performing work-related tasks before and after their scheduled shifts, and Mr. Lopez and other aggrieved employees received no compensation for this time.

LGE knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Lopez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Lopez and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, LGE did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, LGE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LGE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LGE failed to pay all overtime wages by paying a lower overtime rate than required.

LGE's failure to pay Mr. Lopez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated above, due to LGE's company-wide practices of assigning heavy workloads, deadlines, and failure to schedule and/or adhere to a schedule for meal periods, Mr. Lopez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Additionally, due to LGE's restrictions on overtime accrual, LGE systematically failed to pay Mr. Lopez and class members for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. As stated, because LGE discouraged and impeded Mr. Lopez and class members from recording hours worked that were outside of their scheduled shifts, Mr. Lopez and class members were required to perform work off-the-clock before and after their scheduled shift start and end times, including answering emails, pre-screening calls, ordering parts, communicating with management, packing up and sending unused parts, disposing of parts, and washing their work vehicles.

Moreover, LGE maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, LGE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and

determining the scope of the testing and/or physical examinations. LGE gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of LGE. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing LGE's mandatory drug tests and/or physical examinations. However, LGE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, LGE did not pay minimum wages for all hours worked by Mr. Lopez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, LGE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, LGE regularly failed to pay at least minimum wages to Mr. Lopez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. LGE has not provided Mr. Lopez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, LGE has knowingly and intentionally provided Mr. Lopez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LGE issued uniform wage statements to Mr. Lopez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, LGE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because LGE did not record the time Mr. Lopez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), LGE did not list the correct amount of gross wages and net wages earned by Mr. Lopez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, LGE failed to accurately list the total number of the hours worked by Mr. Lopez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period

and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because LGE did not calculate Mr. Lopez's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, LGE did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). LGE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), LGE willfully failed to maintain accurate payroll records for Mr. Lopez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LGE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Lopez and other aggrieved employees in violation of section 1198. Furthermore, in light of LGE's failure to provide Mr. Lopez and other aggrieved employees with second 30-minute meal periods to which they were entitled, LGE kept no records of meal start and end times for second meal periods.

Because LGE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lopez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Lopez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine

whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, LGE failed to pay Mr. Lopez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

LGE willfully failed to pay Mr. Lopez and other aggrieved employees who are no longer employed by LGE all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving LGE's employ.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, LGE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, LGE had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, LGE was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, LGE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. LGE's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, LGE did not pay Mr. Lopez and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, LGE paid Mr. Lopez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LGE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Mr. Lopez and/or other aggrieved employees took sick leave and received these other forms of pay, LGE failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, LGE paid Mr. Lopez and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

LGE's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Lopez and/or other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Mr. Lopez and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, LGE, on a company-wide basis, required Mr. Lopez and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but LGE failed to reimburse them for the costs of their work-related mobile device expenses. Although Mr. Lopez and other aggrieved employees were provided company-issued mobile devices, such as cellular phones, there were occasions when the company phones did not have sufficient reception. Since Mr. Lopez and other aggrieved employees did not work in an office setting, they had no access to additional communication devices other than their own. Mr. Lopez and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from LGE's management. For example, Mr. Lopez used his personal cellular phone to communicate with LGE, navigate to scheduled appliance repairs, and create a WiFi access point for company mobile devices. Although LGE required Mr. Lopez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, LGE failed to reimburse them for these costs.

Second, during the relevant time period, LGE had a company-wide policy of requiring Mr. Lopez and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Lopez was required to drive 30 miles, three (3) times a week, for two (2) months while undergoing training. Although LGE required Mr. Lopez and other aggrieved employees to use their own personal vehicles or obtain alternate transportation to complete their work-related duties, LGE did not reimburse them for their travel expenses.

Additionally, as stated, LGE had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, LGE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. LGE gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of LGE. Although LGE required other aggrieved

employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, LGE never reimbursed them for their travel expenses.

Third, during the relevant time period, LGE, on a company-wide basis, forced Mr. Lopez and other aggrieved employees to purchase tools, supplies and/or other equipment necessary for the completion of their work-related duties. For example, due to COVID-19, Mr. Lopez was required to spend approximately \$40.00 on face masks to wear because LGE required face masks to be worn during work. As a further example, other aggrieved employees were required to purchase tools such as cordless drills (for approximately \$140) and steamers (for approximately \$50) in order to perform their job duties. Although LGE required Mr. Lopez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, LGE did not reimburse them for these expenses.

LGE could have provided Mr. Lopez and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and company vehicles, and tools, supplies, and/or other equipment. Or, LGE could have reimbursed employees for their mobile device usage; mileage; travel expenses; and tools, supplies, and/or other equipment costs. Instead, LGE passed these operating costs off onto Mr. Lopez and other aggrieved employees.

Thus, LGE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, LGE failed, on a company-wide basis, to provide written notice to Mr. Lopez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). LGE's failure to provide Mr. Lopez and other aggrieved employees with written notice of basic information regarding their employment with LGE is in violation of Labor Code section 2810.5.

Mr. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated above, LGE failed to provide Mr. Lopez and other aggrieved employees with personal protective equipment, such as facial coverings and/or masks to keep them safe in the workplace. Despite the fact that LGE required Mr. Lopez and other aggrieved employees to wear certain personal protective equipment, including facial coverings and/or masks, while engaged in their work-related duties, LGE failed to provide such reasonably necessary equipment to Mr. Lopez and other aggrieved employees to keep them safe.

LGE's failure to provide Mr. Lopez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Lopez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." LGE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Lopez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Lopez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Lopez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against LGE for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Lopez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: LG ELECTRONICS ALABAMA, INC. (via U.S. Certified Mail); LG ELECTRONICS
U.S.A., INC. (via U.S. Certified Mail)