

Carolyn H. Cottrell (SBN 166977)
Esther L. Bylsma (SBN 264208)
Brian G. Lee (SBN 300990)
Frank A. Perez (SBN 305832)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com
ebylsma@schneiderwallace.com
blee@schneiderwallace.com
fperez@schneiderwallace.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

PAUL CORLEY, on behalf of himself, Class
members, and the State of California,

Plaintiff,

v.

INVITATION HOMES REALTY
CALIFORNIA, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2213022

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATIONS OF:**

- (1) FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 204, 1182.12, 1194,
1194.2, 1197, AND 1197.1);**
- (2) FAILURE TO PAY OVERTIME WAGES
(LABOR CODE §§ 510, 1194, 1197.1);**
- (3) FAILURE TO AUTHORIZE AND
PERMIT AND/OR MAKE AVAILABLE
MEAL AND REST PERIODS (LABOR
CODE §§ 226.7 AND 512);**
- (4) FAILURE TO REIMBURSE BUSINESS
EXPENDITURES (LABOR CODE § 2802);**
- (5) FAILURE TO PROVIDE TIMELY AND
ACCURATE ITEMIZED WAGE
STATEMENTS (LABOR CODE § 226);**
- (6) WAITING TIME PENALTIES (LABOR
CODE §§ 201-203);**
- (7) UNLAWFUL BUSINESS PRACTICES
(CAL. BUS. & PROF. CODE §§ 17200 ET
SEQ.)**
- (8) THE PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2699(a) and (f))**

DEMAND FOR JURY TRIAL

1 Plaintiff Paul Corley (“Plaintiff”), by his attorneys, allege upon information and belief, except
2 for his own acts, which are alleged on knowledge, as follows:

3 **INTRODUCTION**

4 1. This is a class action and Labor Code Private Attorneys General Act (“PAGA”)
5 enforcement action against Invitation Homes Realty California, Inc. (“Defendant” or “Invitation
6 Homes”). Plaintiff brings his class claims on behalf of himself and all current and former hourly, non-
7 exempt workers employed by Defendant throughout California at any time from four years preceding
8 the filing of this complaint until the resolution of this action (the “Class Period”) (the “Class”). Plaintiff
9 brings his PAGA claims on behalf of the State of California.

10 2. Invitation Homes is a home leasing company that provides professionally managed
11 homes for rent throughout the United States and California. Invitation Homes offers approximately
12 15,650 homes for lease in California. Plaintiff was a nonexempt, hourly employee for Defendant from
13 approximately March to September 2021.

14 3. During the relevant period, Defendant maintained and engaged in unlawful policies and
15 practices in violation of the California Labor Code, Industrial Welfare Commission (“IWC”) Wage
16 Order No. 5-2001, and California Business and Professions Code § 17200 *et seq.* Defendant:

- 17 (a) failed to pay minimum wages;
- 18 (b) failed to pay overtime wages;
- 19 (c) failed to provide compliant meal and rest periods, or premium payments in lieu thereof;
- 20 (d) failed to reimburse necessary business expenditures;
- 21 (e) failed to timely pay full wages owed upon termination or resignation; and
- 22 (f) failed to provide accurate, itemized wage statements.

23 4. Plaintiff seeks full compensation on behalf of himself and Class members for all unpaid
24 wages, owed premium payments, owed reimbursements, penalties, and other relief described below.

25 5. In addition, Plaintiff seeks civil penalties under the PAGA.

26 **JURISDICTION AND VENUE**

27 6. This Court has jurisdiction over Plaintiff’s claims pursuant to the California Labor Code
28 and California Business and Professions Code. The Court also has jurisdiction over Defendant because

1 Defendant is a corporation that does business throughout the State of California.

2 7. Venue is proper in this County pursuant to Code of Civil Procedure §§ 395(a) and/or
3 395.5. Defendant conducts business, has jobsites, and employs putative Class members in this County,
4 and as a result, the causes of action asserted arose in whole or in part in this County.

5 **PARTIES**

6 8. Plaintiff Paul Corley is an individual over the age of eighteen, and at all times relevant to
7 this Complaint was a resident of the State of California. He was employed by Defendant as a non-
8 exempt, hourly maintenance turn technician from March 2021 to September 2021.

9 9. Defendant Invitation Homes Realty California, Inc. is a California corporation, registered
10 to do business and doing business in California. Per the California Secretary of State, Defendant may
11 be served with process by serving its registered agent, CSC – Lawyers Incorporating Service, 2710
12 Gateway Oaks Drive, Suite 150N, Sacramento, CA 9583.

13 **FACTUAL ALLEGATIONS**

14 10. Invitation Homes is a home leasing company that provides professionally managed
15 homes for rent throughout the United States and California. As of 2017, Invitation Homes was
16 reportedly the largest owner of single-family rental homes in the United States. Invitation Homes offers
17 approximately 15,650 homes for lease in California.

18 11. Plaintiff is a former non-exempt, hourly employee of Defendant. Plaintiff worked as a
19 maintenance turn technician for Defendant from March 2021 to September 2021 and traveled to various
20 worksites throughout California under Defendant’s direction. Plaintiff was compensated at an hourly
21 rate of \$25.00.

22 12. During the Class Period, Defendant conducted business under the laws of California,
23 maintained and operated places of business in California, including in this County, and employed Class
24 members in this County. Defendant is a “person” as defined in Labor Code § 18 and Business and
25 Professions Code § 17201. Defendant is also an “employer” as that term is used in the IWC Wage Order
26 No. 5-2001.

27 13. Class members were employed by Defendant throughout California, including in this
28 County, and performed work materially similar to Plaintiff. As a matter of common policy and/or

1 practice, Defendant failed to provide Plaintiff and Class members timely compensation due for all hours
2 worked, including minimum and overtime wages. Specifically, Defendant routinely required Plaintiff
3 and Class members to perform unrecorded and uncompensated work, including, but not limited to,
4 unrecorded travel time in company-issued vehicles and off-the-clock maintenance of company-issued
5 vehicles.

6 14. Defendant caused and was aware that Plaintiff and Class members were working off-the-
7 clock. Plaintiff and Class members were not provided with minimum wage compensation or overtime
8 pay for their off-the-clock work. The time spent working while off-the-clock went unrecorded and
9 uncompensated even though it should have been compensated at minimum wage and/or overtime rates
10 under California law, giving rise to minimum wage and overtime violations. Defendant's common
11 policy/practice of not compensating employees for all hours worked resulted in Class members
12 performing unpaid and unrecorded work for the benefit of Defendant.

13 15. Class members were required to follow and abide by common work, time, pay, meal/rest
14 break, and business reimbursement policies and procedures in the performance of their jobs and duties.
15 The policies and practices of Defendant during the Class Period have been similar for Plaintiff and
16 Class members.

17 16. As a matter of common policy and/or practice, Defendant failed to provide timely,
18 compliant meal/rest breaks to Plaintiff and Class members. Defendant failed to provide breaks by the
19 required hour of work. Plaintiff and Class members were frequently forced to take their meal breaks at
20 least 20 minutes after the end of their fifth hour of work, often later.

21 17. In addition, Defendant: (i) failed to provide breaks that relieved Plaintiff and Class
22 members of all duty; (ii) failed to provide breaks that relinquished Defendant's control over the
23 activities of Plaintiff and Class members; (iii) failed to provide Plaintiff and Class members a
24 reasonable opportunity to take uninterrupted breaks for the full required period; and (iv) impeded and
25 discouraged Plaintiff and Class members from taking timely and compliant breaks.

26 18. Under the Labor Code and the applicable IWC Wage Order, Defendant was required to
27 pay premium wages to Plaintiff and Class members for failures to provide compliant meal/rest breaks.
28 Defendant did not provide premium wages to Plaintiff and Class members in lieu of non-compliant

1 meal/rest breaks.

2 19. In addition, as a matter of common policy and/or practice, Defendant failed to provide
3 Plaintiff and Class members reimbursement for all necessary expenditures or losses incurred by
4 Plaintiff and Class members in direct consequence of the discharge of their duties, or as a result of their
5 obedience to the directions of Defendant. Defendant systematically required Plaintiff and Class
6 members to purchase their own tools necessary to perform their required duties. Defendant did not
7 reimburse Plaintiff and Class members for such expenses.

8 20. Defendant paid Plaintiff and Class members on an hourly rate basis. At the end of each
9 pay period, Plaintiff and Class members received wages from Defendant that were determined by
10 common systems and methods that Defendant selected and controlled.

11 21. Defendant's failure to pay Plaintiff and Class members minimum wages and overtime
12 compensation for off-the-clock work, as well as failure to provide premium pay for non-compliant
13 meal/rest periods and unreimbursed business expenses, results in a failure to provide accurate itemized
14 wage statements as required by California law to Plaintiff and Class members. The wage statements
15 Defendant provides are not accurate because they do not reflect the actual total hours worked or the
16 actual amount of compensation earned by Plaintiff and Class members.

17 22. Further, Defendant failed to provide Plaintiff and Class members who are former
18 employees, with full payment of all wages owed upon separation from employment. At the time their
19 employment ended, Plaintiff and Class members were owed wages for all time worked, including
20 overtime, premium pay for non-compliant meal and rest periods, and reimbursement for business
21 expenditures, whether their termination was voluntary or involuntary. Defendant failed to provide
22 Plaintiff and Class members with such owed compensation within the required time period.

23 23. Defendant is aware that its policies and practices have deprived Plaintiff and Class
24 members of substantial pay for all time worked, that Plaintiff and Class members do not receive legally
25 compliant meal/rest periods or premium pay for such non-compliant meal/rest periods, and that Plaintiff
26 and Class members are not reimbursed for business expenditures. Thus, Defendant's denial of wages,
27 compliant meal and rest periods, premium pay for non-compliant meal and rest periods, and
28 reimbursement for business expenditures to Plaintiff and Class members, is and/or was deliberate and

1 willful.

2 24. Defendant's conduct caused significant damages to Class members in an amount to be
3 determined at trial.

4 25. Defendant's failure to provide timely compensation due for all hours worked, including
5 minimum wage and overtime, failure to provide timely and compliant meal and rest breaks (or premium
6 wages in lieu thereof), failure to provide business reimbursements, failure to provide accurate wage
7 statements, failure to provide full payment of wages upon separation – for all current and former hourly,
8 non-exempt workers employed by Defendant throughout California ("Aggrieved Employees") – also
9 give rise to civil penalties pursuant to the PAGA.

10 **CLASS ACTION ALLEGATIONS**

11 26. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 27. Plaintiff brings causes of action as a class action on behalf of himself and all others
14 similarly situated pursuant to Civil Code of Procedure § 382. The Class is defined as: all current and
15 former hourly, non-exempt workers employed by Defendant throughout California at any time during
16 the Class Period.

17 28. This action has been brought and may properly be maintained as a class action because
18 there is a well-defined community of interest in the litigation and the proposed class is easily
19 ascertainable.

20 29. Numerosity: The potential members of the class are so numerous that joinder of all the
21 members of the Class is impracticable. Plaintiff is informed and believes that the number of Class
22 members exceeds 100. This volume makes bringing the claims of each individual member of the Class
23 before this Court impracticable. Likewise, joining each individual member of the Class as a plaintiff in
24 this action is impracticable. Furthermore, the identities of the Class will be determined from
25 Defendant's records, as will the compensation paid to each of them. As such, a class action is a
26 reasonable and practical means of resolving these claims. To require individual actions would prejudice
27 the Class and Defendant.

28 30. Commonality: There are questions of law and fact common to Plaintiff and the Class that

predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, but are not limited to:

(a) Whether Defendant has a policy and/or practice of requiring Class members to be in the control of, spend time primarily for the benefit of, and work for Defendant off-the-clock and without compensation;

(b) Whether Defendant fails to compensate Class members for all hours worked, including as minimum wages, in violation of the Labor Code and applicable IWC Wage Order;

(c) Whether Defendant fails to properly pay overtime compensation, at either one and one-half times or double the regular rate of pay, to Class members in violation of the Labor Code and applicable IWC Wage Order;

(d) Whether Defendant fails to authorize and permit, make available, and/or provide Class members with timely meal and rest periods to which they are entitled, in violation of the Labor Code and applicable IWC Wage Order;

(e) Whether Defendant fails to provide premium payment in lieu of non-compliant meal and rest periods, in violation of the Labor Code and applicable IWC Wage Order;

(f) Whether Defendant fails to fully reimburse Class members with all necessary business expenses made for the benefit of Defendant, in violation of the Labor Code;

(g) Whether Defendant fails to timely pay Class members for all wages owed upon termination of employment in violation of the Labor Code;

(h) Whether Defendant fails to provide Class members with timely, accurate itemized wage statements in violation of the Labor Code;

(i) Whether Defendant violates Business and Professions Code §§ 17200 *et seq.*, by:

(i) failing to compensate Plaintiff and Class members for all hours worked, including at minimum wage and as overtime compensation;

(ii) failing to authorize and permit, make available, and/or provide Plaintiff and Class members with timely meal and rest periods to which they are entitled, and failing to provide premium pay for any noncompliant meal and rest periods;

(iii) failing to fully reimburse Plaintiff and Class members for all necessary business

1 expenses made for the benefit of Defendant;

2 (iv) failing to pay Plaintiff and Class members for all wages owed upon separation of
3 employment;

4 (v) failing to provide Plaintiff and Class members with timely, accurate itemized
5 wage statements;

6 (j) Whether injunctive relief is appropriate with respect to Defendant's actions towards the
7 Class members as a whole; and

8 (k) The proper formula for calculating damages, restitution, and penalties owed to Plaintiff
9 and the Class as alleged herein.

10 31. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendant's common
11 course of conduct in violation of law as alleged herein caused Plaintiff and Class members to sustain
12 the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-
13 extensive with the claims of the Class.

14 32. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated by
15 Defendant. In that sense, Plaintiff does not have any conflicts of interest with other Class members and
16 will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent
17 and experienced in litigating complex cases and large class actions, including wage and hour cases.
18 Plaintiff will fairly and adequately represent and protect the interests of the Class members.

19 33. Superiority of Class Action: A class action is superior to other available means for the
20 fair and efficient adjudication of this controversy. Individual joinder of all proposed Class members is
21 not practicable, and questions of law and fact common to the Class predominate over any questions
22 affecting only individual members of the Class. Each proposed Class member has been damaged and
23 is entitled to recovery by reason of Defendant's illegal policies and/or practices. Class action treatment
24 will allow those similarly situated persons to litigate their claims in the manner that is most efficient
25 and economical for the parties and the judicial system.

26 34. In the alternative, the Class may be certified because the prosecution of separate actions
27 by the individual members of the Class would create a risk of inconsistent or varying adjudication with
28 respect to individual members of the Class which would establish incompatible standards of conduct

1 for Defendant.

2 35. If each individual Class member was required to file an individual lawsuit, Defendant
3 would necessarily gain an unconscionable advantage because Defendant would be able to exploit and
4 overwhelm the limited resources of each member of the Class with Defendant's vastly superior
5 financial and legal resources.

6 36. Requiring each individual Class member to pursue an individual remedy would also
7 discourage the assertion of lawful claims by the Class members who would be disinclined to pursue
8 these claims against Defendant because of an appreciable and justifiable fear of retaliation and
9 permanent damage to their lives, careers and well-being.

10 **FIRST CAUSE OF ACTION**
11 **Failure to Pay Minimum Wages**
12 **Pursuant to Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197.1**
13 **(On Behalf of the Class)**

14 37. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
15 herein.

16 38. California Labor Code § 204(a) requires employers to pay twice during each calendar
17 month all wages earned by any employee.

18 39. California Labor Code § 200 defines wages as "all amounts for labor performed by
19 employees of every description, whether the amount is fixed or ascertained by the standard of time,
20 task, piece, commission basis or other method of calculation."

21 40. California Labor Code § 1182.12 sets forth the minimum wages for all industries,
22 including the following amounts for any employer who employs 26 or more employees: (i) "From
23 January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour"; and (ii) "From
24 January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour."

25 41. IWC Wage Order 5-2001, Section 4 sets forth the minimum wages, including the
26 following amounts for any employer who employs 26 or more employees: (i) "Fourteen dollars
27 (\$14.00) per hour for all hours worked, effective January 1, 2021"; and (ii) "Fifteen dollars (\$15.00)
28 per hour for all hours worked, effective January 1, 2022."

42. California Labor Code §1194 provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving

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

43. California Labor Code §1197.1(a) provides:

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

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

44. California Labor Code §1194.2(a) provides:

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.

45. Defendant regularly failed to timely pay Plaintiff and Class members all compensation due in violation of the above. This failure was caused by and through Defendant's common policy and/or practice of requiring Plaintiff and Class members to perform unrecorded and uncompensated work. Defendant required Plaintiff and Class members to perform off-the-clock work including unrecorded travel time, at times exceeding two hours of uncompensated travel time in a day, and off-

1 the-clock maintenance of company-issued vehicles. In addition, Defendant failed to pay Plaintiff and
2 Class members at least minimum wage for compensation owed in connection with meal and rest period
3 premiums and final wages after the end of employment.

4 46. As a direct and proximate result of the unlawful acts and/or omissions of Defendant,
5 Plaintiff and Class members have been deprived of wages in an amount to be determined at trial, and
6 are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys'
7 fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

8 47. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

9
10 **SECOND CAUSE OF ACTION**
11 **Failure to Pay Overtime Compensation**
12 **Pursuant to Labor Code §§ 510, 1194, 1197.1**
13 **(On Behalf of the Class)**

14 48. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
15 herein.

16 49. California Labor Code § 200 defines wages as “all amounts for labor performed by
17 employees of every description, whether the amount is fixed or ascertained by the standard of time,
18 task, piece, commission basis or other method of calculation.” All such wages are subject to California’s
19 overtime requirements.

20 50. Labor Code § 510 provides, in pertinent part, that:

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

51. The IWC Wage Order 5-2001(3)(A)(1) state:

The following overtime provisions are applicable ... employees shall not be
employed more than eight (8) hours in any workday or more than 40 hours in any
workweek unless the employee receives one and one-half (1 ½) times such
employee’s regular rate of pay for all hours worked over 40 hours in the workweek.
Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8)

hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: . . .

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

52. California Labor Code §1194 provides:

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

53. California Labor Code §1197.1(a) provides:

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

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.suit.

54. California Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violates Wage Orders, including Wage Order 5-2001.

55. Defendant regularly does not compensate Plaintiff and Class members for their overtime

1 hours. Defendant required Plaintiff and Class members to perform off-the-clock work including
2 unrecorded travel time, in excess of eight (8) hours per day and forty (40) hours per week, and and off-
3 the-clock maintenance of company-issued vehicles.

4 56. Plaintiff and Class members have worked overtime hours for Defendant without being
5 paid overtime premiums in violation of the Labor Code, IWC Wage Order 5-2001, and other applicable
6 law.

7 57. Defendant has knowingly and willfully refused to perform its obligation to provide
8 Plaintiff and Class members with premium wages for all overtime work.

9 58. As a proximate result of the aforementioned violations, Plaintiff and the Class have been
10 damaged in an amount according to proof at time of trial. Plaintiff and the Class are also entitled to
11 recover penalties, interest, attorneys' fees, expenses, costs of suit, and/or other relief pursuant to statute.
12 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

13 **THIRD CAUSE OF ACTION**
14 **Failure to Provide Meal and Rest Periods or Premium Pay in Lieu Thereof**
15 **Pursuant to Labor Code §§ 226.7 and 512**
16 **(On Behalf of the Class)**

17 59. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
18 herein.

19 60. Labor Code § 512(a) provides:

20 An employer shall not employ an employee for a work period of more than five
21 hours per day without providing the employee with a meal period of not less than
22 30 minutes, except that if the total work period per day of the employee is no more
23 than six hours, the meal period may be waived by mutual consent of both the
24 employer and employee. An employer shall not employ an employee for a work
25 period of more than 10 hours per day without providing the employee with a second
26 meal period of not less than 30 minutes, except that if the total hours worked is no
27 more than 12 hours, the second meal period may be waived by mutual consent of
28 the employer and the employee only if the first meal period was not waived.

29 61. Labor Code § 226.7(c) provides:

(c) If an employer fails to provide an employee a meal or rest or recovery period in
accordance with a state law, including, but not limited to, an applicable statute or
applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational
Safety and Health, the employer shall pay the employee one additional hour of pay

at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

62. IWC Wage Order 5-2001, Section 11 provide:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

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

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

63. IWC Wage Order 5-2001, Section 12 provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

64. Defendant does not authorize, permit, and/or make available timely and uninterrupted meal and rest breaks to Plaintiff and putative Class members, and Plaintiff and putative Class members

1 are often too busy with work during the day or have inadequate time scheduled to have time to take
2 bona fide meal and rest breaks.

3 65. As a result, Defendant does not provide Plaintiff and putative Class members with duty-
4 free, uninterrupted, and timely thirty-minute meal periods during which Plaintiff and putative Class
5 members should be completely relieved of any duty, by the end of the fifth hour of work. Defendant
6 also does not provide Plaintiff and putative Class members with duty-free, uninterrupted, and timely
7 ten-minute rest periods during which Plaintiff and putative Class members should be completely
8 relieved of any duty, by the end of the fourth hour of work, and again by the end of the eighth hour of
9 work.

10 66. In violation of Labor Code §§ 226.7, 512, and IWC Wage Order 5-2001, Defendant
11 regularly failed to authorize and permit and/or make available to Plaintiff and the Class timely,
12 compliant meal and rest periods to which they are entitled. Defendant also failed to pay Plaintiff and
13 the Class one additional hour of pay at the employee's regular rate of compensation for each workday
14 that a compliant meal period and rest break was not provided.

15 67. Pursuant to Labor Code § 226.7 and IWC Wage Order 5-2001, Plaintiff and the Class are
16 entitled to recover from Defendant an additional hour of pay at their regular rates of pay for each work
17 day that a required meal period was not provided, and an additional hour of pay at their regular rates of
18 pay for each work day that a required rest break was not provided.

19 68. As a proximate result of the aforementioned violations, Plaintiff and the Class have been
20 damaged in an amount according to proof at time of trial. Plaintiff and the Class are also entitled to
21 recover penalties, interest, attorneys' fees, expenses, costs of suit, and/or other relief pursuant to statute.
22 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

23 **FOURTH CAUSE OF ACTION**
24 **Failure to Reimburse for Necessary Business Expenses**
25 **Pursuant to Labor Code § 2802**
(On Behalf of the Class)

26 69. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 ///

1 70. Labor Code § 2802 provides, in relevant part:

2 An employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties, or of his or her obedience to the directions of the
5 employer, even though unlawful, unless the employee, at the time of obeying the
6 directions, believed them to be unlawful. ... For the purposes of this section, the
7 term “necessary expenditures or losses” shall include all reasonable costs,
8 including, but not limited to, attorney’s fees incurred by the employee enforcing
9 the rights granted by this section.

10 71. Defendant regularly required Plaintiff and Class members to to purchase their own tools,
11 – including drills, and electrical and plumbing hand tools – necessary to perform required duties.
12 Defendant did not reimburse Plaintiff and the Class members for these necessary expenditures or losses
13 incurred by Plaintiff and Class members.

14 72. Defendant is liable to Plaintiff and Class members for the unreimbursed expenses and
15 penalties, with interest thereon.

16 73. As a proximate result of the aforementioned violations, Plaintiff and the Class have been
17 damaged in an amount according to proof at time of trial. Plaintiff and the Class are also entitled to
18 recover penalties, interest, attorneys’ fees, expenses, costs of suit, and/or other relief pursuant to statute.
19 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

20 **FIFTH CAUSE OF ACTION**
21 **Failure to Provide Accurate Itemized Wage Statements**
22 **Pursuant to Labor Code § 226**
23 **(On Behalf of the Class)**

24 74. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 75. Labor Code § 226(a) provides:

27 An employer, semimonthly or at the time of each payment of wages, shall furnish
28 to his or her employees, either as a detachable part of the check, draft, or voucher
 paying the employee's wages, or separately if wages are paid by personal check or
 cash, an accurate itemized statement in writing showing: (1) gross wages earned,
 (2) total hours worked by the employee, except as provided in subdivision (j), (3)
 the number of piece-rate units earned and any applicable piece rate if the employee
 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
 on written orders of the employee may be aggregated and shown as one item, (5)
 net wages earned, (6) the inclusive dates of the period for which the employee is
 paid, (7) the name of the employee and only the last four digits of his or her social

1 security number, (8) the name and address of the legal entity that is the employer
2 and, if the employer is a farm labor contractor, as defined in subdivision (b) of
3 Section 1682, the name and address of the legal entity that secured the services of
4 the employer, and (9) all applicable hourly rates in effect during the pay period and
5 the corresponding number of hours worked at each hourly rate by the employee
6 The deductions made from payments of wages shall be recorded in ink or other
indelible form, properly dated, showing the month, day, and year, and a copy of the
statement or a record of the deductions shall be kept on file by the employer for at
least three years at the place of employment or at a central location within the State
of California.

7 76. IWC Wage Order 5-2001, Section 7, establishes similar wage statement requirements.

8 77. Labor Code § 226(e) provides:

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

13 78. Defendant failed to provide timely, accurate itemized wage statements to Plaintiff and
14 Class members in accordance with Labor Code § 226(a) and IWC Wage Order 5-2001. The wage
15 statements Defendant provided to Plaintiff and Class members do not accurately reflect the actual hours
16 worked, actual gross wages earned, or actual net wages earned. Defendant's actions caused, among
17 other things, impediment to Plaintiff and Class members from knowing the amount of wages to which
18 they were and are entitled, and the costs necessary for Plaintiff and Class members to calculate the
19 correct net wages for each pay period and the amount of employment taxes that were not paid to state
20 and federal tax authorities.

21 79. Defendant is liable to Plaintiff and Class members for "the greater of all actual damages"
22 or, "fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
23 (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty
24 of four thousand dollars (\$4,000)."

25 80. As a proximate result of the aforementioned violations, Plaintiff and the Class have been
26 damaged in an amount according to proof at time of trial. Plaintiff and the Class are also entitled to
27 recover penalties, interest, attorneys' fees, expenses, costs of suit, and/or other relief pursuant to statute.
28 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Waiting Time Penalties
Pursuant to Labor Code §§ 201-203
(On Behalf of the Class)

81. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

82. Labor Code § 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

83. Labor Code § 202 provides:

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

84. Labor Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

85. Defendant failed to provide Class members who are former employees ("Former Employees") with their wages when due under California law after their employment with Defendant ended. Plaintiff and Former Employees left their employment with Defendant during the Class Period, at which time Defendant owed them unpaid wages.

86. Defendant willfully refused and continues to refuse to pay Plaintiff and Former Employees all the wages that are due and owing to them upon the end of their employment.

87. Defendant's willful failure to pay Plaintiff and Former Employees the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendant is liable to for all penalties owing pursuant to Labor Code § 203, plus interest and other statutory relief as allowed.

88. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

///

///

SEVENTH CAUSE OF ACTION
Violation of California Business and Professions Code §§ 17200, et seq.
(On Behalf of the Class)

89. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

90. Business and Professions Code § 17200 provides:

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

91. Business and Professions Code § 17203 provides:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

92. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action.

93. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

94. Beginning at an exact date unknown to Plaintiff, but at least since the beginning of the Class Period, Defendant has committed acts of unfair competition, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

(a) violations of Labor Code §§ 204, 1182.12, 1194, 1197, 1197.1 regarding payment of all minimum wages due;

1 (b) violations of Labor Code §§ 510, 1194, 1197.1 regarding payment of all overtime
2 compensation due;

3 (c) violations of Labor Code §§ 226.7, 512 and Wage Order 5-2001 pertaining to meal and
4 rest periods;

5 (d) violations of Labor Code § 2802 pertaining to reimbursement of business expenditures;

6 (e) violations of Labor Code § 226 regarding accurate, timely itemized wage statements; and

7 (f) violations of Labor Code §§ 201-203 pertaining to waiting time penalties.

8 95. The violations of these laws and regulations, as well as of the fundamental California
9 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Business
10 and Professions Code § 17200 *et seq.*

11 96. The acts and practices described above constitute unfair, unlawful and fraudulent
12 business practices, and unfair competition, within the meaning of Business and Professions Code §§
13 17200 *et seq.* Among other things, the acts and practices have taken compensation from Plaintiff and
14 the Class members rightfully owed to them, while enabling Defendant to gain an unfair competitive
15 advantage over law-abiding employers and competitors.

16 97. Business and Professions Code § 17203 provides that a court may make such orders or
17 judgments as may be necessary to prevent the use or employment by any person of any practice which
18 constitutes unfair competition.

19 98. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
20 the Class members have suffered a loss of money and property, in the form of unpaid compensation
21 which is due and payable to them.

22 99. Business and Professions Code § 17203 provides that the Court may restore to any person
23 in interest any money or property which may have been acquired by means of such unfair competition.
24 Plaintiff and the Class are entitled to restitution pursuant to Business and Professions Code § 17203 for
25 all payments unlawfully withheld from employees during the four-year period prior to the filing of this
26 Complaint.

27 100. Plaintiff's success in this action will enforce important rights affecting the public interest
28 and, in that regard, Plaintiff sues on behalf of himself as well as other Class members. Plaintiff and

1 Class members seek and are entitled to unpaid compensation, declaratory relief, and all other equitable
2 remedies owing to them.

3 101. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There
4 is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right,
5 and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees
6 from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure
7 §1021.5 and otherwise.

8 102. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

9 **EIGHTH CAUSE OF ACTION**
10 **Penalties Pursuant to § 2699(a) and 2699(f) of the Private Attorneys General Act**
11 **(Representative Claim On Behalf of the State of California)**

12 103. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 104. Under the PAGA, an aggrieved employee may bring a representative action as a private
15 attorney general to recover civil penalties for an employer's violations of the California Labor Code
16 and IWC Wage Orders. These civil penalties are in addition to any other relief available under the
17 California Labor Code, and must be allocated 75% to California's Labor and Workforce Development
18 Agency ("LWDA") and 25% to aggrieved employees.

19 105. Labor Code § 2699(a) provides:

20 Notwithstanding any other provision of law, any provision of this code that
21 provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency or any of its departments, divisions commissions, boards,
23 agencies or employees, for a violation of this code, may, as an alternative, be
24 recovered through a civil action brought by an aggrieved employee on behalf of
25 himself or herself and other current or former employees.

26 106. Plaintiff alleges that Defendant's failure to provide timely compensation due for all hours
27 worked by Aggrieved Employees, including minimum wage and overtime, failure to provide timely
28 and compliant meal and rest breaks to Aggrieved Employees (or premium wages in lieu thereof), failure
to provide Aggrieved Employees business reimbursements, failure to provide Aggrieved Employees
accurate wage statements, failure to provide Aggrieved Employees full payment of wages upon
separation - give rise to civil penalties pursuant to the PAGA.

1 107. Plaintiff alleges that Defendant violated the following provisions of the California Labor
2 Code that are actionable through the PAGA: Cal. Lab. Code §§ 201-203, 204, 226, 226.3, 226.7, 510,
3 512, 1182.12, 1197, 1197.1, 1198, 2802, and the applicable IWC Wage Orders.

4 108. Each of these violations entitles Plaintiff to recover the applicable civil penalties as a
5 private attorney general, to be distributed to the State of California and Aggrieved Employees under
6 the PAGA.

7 109. Plaintiff is entitled to civil penalties, to be paid by Defendant and allocated as PAGA
8 requires, pursuant to California Labor Code § 2699(a) for Defendant's violations of the California
9 Labor Code and IWC Wage Orders for which violations a civil penalty is already specifically provided
10 by law. Furthermore, Plaintiff is entitled to civil penalties, to be paid by Defendant and allocated as
11 PAGA requires, pursuant to California Labor Code § 2699(f) for Defendant's violations of the
12 California Labor Code and IWC Wage Orders for which violations a civil penalty is not already
specifically provided.

13 110. Labor Code § 2699(f) provides:

14 For all provisions of this code except those for which a civil penalty is specifically
15 provided, there is established a civil penalty for a violation of these provisions, as
16 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
17 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
employee per pay period for the initial violation and two hundred dollars (\$200) for
each aggrieved employee per pay period for each subsequent violation.

18 111. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the LWDA with notice
19 of his intention to file this claim on April 29, 2022. *See* LWDA Case No. LWDA-CM-881242-22, at:
20 <https://cadir.secure.force.com/PagaSearch/PAGACaseDetails?id=a1Bt0000002APhHEAW>. At least
21 sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the
22 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

23 112. Plaintiff seeks the aforementioned penalties, with interest thereon, and an award of
24 attorneys' fees and costs under the PAGA. *See* Labor Code § 2699(g)(1). Wherefore, Plaintiff requests
25 relief as hereinafter provided.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

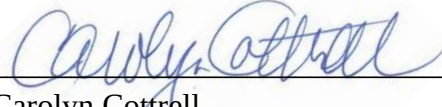
1. For the Court to declare, adjudge, and decree that Defendant violated the California Labor Code as alleged herein;
2. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
3. For a declaratory judgment that Defendant violated the California Labor Code, California law, and public policy as alleged herein;
4. For a declaratory judgment that Defendant violated California Business and Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code;
5. For appropriate injunctive and equitable relief, including an order enjoining Defendant from continuing its unlawful practices;
6. For an equitable accounting to identify, locate, and restore to all current and former employees the compensation they are due, with interest thereon;
7. For an order appointing counsel for Plaintiff as class counsel for the Class;
8. For an order awarding Plaintiff and putative Class members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, treble damages, punitive damages, and all other sums of money owed to Plaintiff and Class members, together with interest on these amounts, according to proof;
9. For an order awarding civil penalties to the full extent provided for by the PAGA;
10. For an order awarding Plaintiff and the Class members civil penalties pursuant to the California Labor Code, and provisions cited herein, with interest thereon;
11. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5 and/or other applicable law;

- 1 12. For all costs of suit;
2 13. For interest on any damages and/or penalties awarded, as provided by applicable law;
3 and;
4 14. For such other and further relief as this Court deems just and proper.

5 Respectfully submitted,

6 Dated: August 22, 2022

SCHNEIDER WALLACE
COTRELL KONECKY

8 By: 
9 Carolyn Cottrell

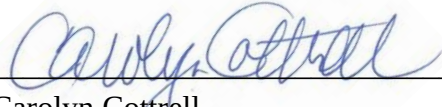
10 Attorney for Plaintiff

11 **JURY DEMAND**

12 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a
13 jury.
14

15 Dated: August 22, 2022

SCHNEIDER WALLACE
COTRELL KONECKY

17 By: 
18 Carolyn Cottrell

19 Attorney for Plaintiff
20
21
22
23
24
25
26
27
28