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Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

RAMON GOMEZ, on behalf of himself and
other similarly situated employees in the State
of California,

Plaintiff,

v.

RD ENGINEERING & CONSTRUCTION,
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2022-00025793-CU-OE-CTL

Unlimited Civil
Amount Demanded exceeds \$25,000.00

CLASS ACTION COMPLAINT
[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Provide Heat Recovery Periods;
4. Failure to Pay Minimum, Regular, and Overtime Wages;
5. Failure to Indemnify All Necessary Expenditures;
6. Illegal Deductions from Wages;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment; and
9. Violation of Business & Professions Code § 17200, *et seq.*

REPRESENTATIVE ACTION FOR PAGA
PENALTIES

1. Representative Claims Under the Labor Code Private Attorneys General Act (PAGA) [Labor Code § 2698, *et seq.*]

– JURY TRIAL DEMANDED –

RAMON GOMEZ, individually and on behalf of all other similarly-situated employees of Defendants RD ENGINEERING & CONSTRUCTION, INC., and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff, RAMON GOMEZ, ("Plaintiff") brings this individual, putative class action, and representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, ("PAGA"), against Defendants RD ENGINEERING & CONSTRUCTION, INC., and DOES 1 through 50, inclusive (collectively, "Defendants"), for engaging in a pattern of wage and hour violations under the California Labor Code, and the applicable Industrial Welfare Commission ("IWC") Wage Orders.

2. Plaintiff brings this putative class action on behalf of himself and all current and former similarly-situated employees who were employed by Defendants in the State of California as hourly non-exempt employees during the applicable relevant time periods.

3. Any limitations period referenced in this complaint is extended pursuant to Emergency Rule 9 (a) of the "Emergency Rules Related to COVID-19," Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 ["Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."] Any reference to the relevant time period or statute of limitations referenced in this complaint is extended into the past by the number of days in which this tolling was in effect.

4. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

5. Defendants' systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other similarly situated employees in California include, but are not limited to:

- a. Failure to provide timely, uninterrupted off-duty meal periods and associated premium wages;
- b. Failure to authorize and permit off-duty paid rest periods and associated premium

wages;

c. Failure to authorize and properly permit compliant recovery periods and to pay the associated premium wages;

d. Failure to pay all minimum, regular, and overtime wages for all hours worked;

e. Failure to indemnify necessary business expenses;

f. Illegal deductions from wages;

g. Failure to provide accurate itemized wage statements; and

h. Failure to timely pay all wages due during and upon separation of employment.

6. Plaintiff brings this lawsuit against Defendants seeking restitution, declaratory judgment, injunctive relief, and monetary relief on behalf of himself and all other similarly-situated employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, penalties, and costs pursuant to Labor Code sections 201, 202, 204, 221, 223, 224, 225.5, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, California Business and Professions Code 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiff reserves the right to name additional named plaintiffs and/or class representatives.

II. PARTIES

A. PLAINTIFF

8. Plaintiff is a former employee of Defendants, who worked as a non-exempt employee for Defendants in the State of California, County of San Diego.

9. Plaintiff is a resident of the State of California and currently resides in San Luis Obispo County.

10. At all relevant times, other similarly situated and/or aggrieved non-exempt employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. DEFENDANTS

11. Defendant RD Engineering & Construction, Inc., is believed to be a California company operating within the State of California. Defendant RD Engineering & Construction, Inc.'s principal place

1 of business is believed to be 1660 N. Magnolia Ave., El Cajon, California 92020.

2 12. Upon information and belief, Defendants employed Plaintiff and similarly situated persons
3 as hourly employees within California. Defendants have done and do business throughout the State of
4 California.

5 13. Defendants' wrongful conduct, as alleged herein, occurred in the County of San Diego and,
6 upon information and belief, throughout California.

7 14. Plaintiff is informed and believes, and thereon alleges, that each Defendant, whether named
8 or fictitious, is and, at all relevant times was, authorized to do business and did business in the State of
9 California and was Plaintiff's and other similarly situated employees' "employer" or person acting on
10 behalf of the employer as defined in and subject to the California Labor Code and the applicable IWC
11 Wage Order.

12 15. The true names and capacities, whether individual, corporate, associate, or otherwise, of
13 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues
14 Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and
15 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
16 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to
17 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
18 DOES when such identities become known.

19 16. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.

20 17. Plaintiff and all other similarly situated and/or aggrieved employees are, and at all relevant
21 times were, employees of each Defendant, including DOES 1 through 50, within the meanings set forth
22 in the California Labor Code and applicable IWC Wage Order.

23 18. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
24 or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in
25 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment
26 and ratified the acts of each other Defendant.

27 19. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
28 or fictitious, exercised control over Plaintiff's and other similarly situated and/or aggrieved employees'

1 wages, hours and/or working conditions and/or suffered or permitted Plaintiff and all other similarly
2 situated employees to work, or engaged to work, thereby creating a common law employment relationship,
3 with the Plaintiff and all other similarly situated employees. Therefore, Defendants, and each of them,
4 employed or jointly employed Plaintiff and all other similarly situated employees.

5 20. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
6 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
7 or policy, and the acts of each Defendants are legally attributable to the other Defendants.

8 21. Each Defendant, whether named or fictitious, was the alter ego of each of the other
9 Defendants at all relevant times herein.

10 22. A unity of interest and ownership between each Defendant, whether named or fictitious,
11 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated
12 employees.

13 **III. JURISDICTION AND VENUE**

14 23. This Court has subject matter jurisdiction to hear this case because Plaintiff is informed
15 and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the
16 minimum jurisdictional limits of the Superior Court.

17 24. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
18 Procedure § 395. Defendant, RD Engineering & Construction, Inc., operates within California and does
19 business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and
20 all other similarly situated and/or aggrieved employees within the State of California and the County of
21 San Diego.

22 **IV. GENERAL ALLEGATIONS**

23 25. Plaintiff RAMON GOMEZ is a former employee of Defendants who worked in a non-
24 exempt position from approximately December of 2020 until his termination in December of 2021.

25 26. Plaintiff worked as a tower hand at different work sites in California, including in San
26 Diego County.

27 27. Plaintiff typically worked 5 days a week, sometimes 6, Monday through Saturday. He
28 typically worked 12-hour shifts and frequently worked overtime hours entitling him to overtime pay.

1 28. Plaintiff and other similarly situated and/or aggrieved California employees of Defendants
2 predominantly worked outside at telecommunication towers throughout California during their entire
3 shifts.

4 29. Plaintiff's main duty during his employment with Defendants was to climb towers for
5 installation of fiber optic cables, maintenance, and repairs.

6 30. Plaintiff's job included constant travel to various locations throughout San Diego County
7 and Northern California.

8 31. Throughout Plaintiff's employment, Defendants controlled the hours and conditions of
9 Plaintiff's and other similarly situated and/or aggrieved employees' work.

10 32. Defendants denied and continue to deny Plaintiff and other similarly situated and/or
11 aggrieved employees specific rights afforded to them under the California Labor Code and the Industrial
12 Welfare Commission ("IWC"). Defendants failed to pay all minimum and regular wages owed, failed to
13 provide legally compliant meal and rest breaks or pay meal and rest break premiums, failed to provide
14 recovery periods and/or failed to pay premiums when a recovery period was not provided, failed to
15 reimburse for all business expenses, failed to maintain accurate records and issue accurate itemized wage
16 statements, and failed to timely pay all wages, including all wages due upon separation of employment.

17 33. Plaintiff and all other similarly situated employees are, and at all times pertinent hereto,
18 have been classified as non-exempt employees by Defendants.

19 34. Plaintiff and other similarly situated employees typically worked over eight hours in a
20 workday. Plaintiff and other similarly situated employees have been forced by Defendants to work over
21 five (5) hours in one day without being provided a compliant thirty (30) minute uninterrupted meal break
22 and not being compensated one (1) hour of pay at their regular rate of compensation for each workday
23 that a meal period was not provided or provided after five (5) hours, all in violation of California labor
24 laws, regulations, and the applicable IWC Wage Order.

25 35. While working at sites, Plaintiff was never told to take a meal period or recovery period as
26 his boss would frequently pressure him and other similarly situated employees to work through their entire
27 shift without a break. Defendants did not have enough staff to relieve Plaintiff and other similarly situated
28 employees for a 30-minute off duty meal period, before the end of the fifth hour of work. Typically,

1 Plaintiff ate meals while driving from one jobsite to another.

2 36. Defendants also failed to inform Plaintiff and other similarly situated employees of their
3 right to take compliant meal periods by way of a lawful policy. Defendants further failed to inform Plaintiff
4 and other similarly situated employees of their right of being compensated with one (1) hour of wages at
5 the regular rate of compensation for each missed, late, interrupted and/or on-duty meal period.

6 37. Plaintiff and all other similarly situated employees were not compensated with one (1) hour
7 of wages at the regular rate of compensation for each missed, short, late or interrupted meal period as
8 required by California law.

9 38. Defendants had a policy and practice of improperly deducting up to one hour's worth of
10 pay for each shift Plaintiff and, on information and belief, other similarly situated employees worked.
11 Even though Defendants failed to provide Plaintiff and other similarly situated employees with off-duty
12 meal periods and/or rest periods, Defendants deducted up to one hour of pay from their wages for these
13 on-duty meal and rest periods.

14 39. Defendants similarly had a pattern and practice of failing to authorize and permit Plaintiff
15 and, on information and belief, other similarly situated employees to take legally compliant rest periods
16 of at least 10-minutes for every four-hour work period, or major fraction thereof.

17 40. Plaintiff and other similarly situated employees were required to remain on duty through
18 their rest breaks and/or were interrupted during their rest breaks. Plaintiff and other similarly situated
19 employees were required to finish their tasks before they could take an off-duty 10-minute rest break.
20 However, Plaintiff and other similarly situated employees were precluded from taking a compliant off-
21 duty rest break because Defendants did not have enough staff to complete the tasks required for the day
22 and take rest breaks.

23 41. In addition to the reasons above, Plaintiff and other similarly situated and/or aggrieved
24 employees were never provided rest breaks due to having to remain on-duty and monitor
25 telecommunication towers and machinery throughout their shifts.

26 42. Defendants failed to maintain a policy informing Plaintiff and other similarly situated
27 employees of their right to take an off-duty rest break of at least 10-minutes for every four-hour work
28 period, or major fraction thereof, and of their right to be compensated with one (1) hour of wages at the

regular rate of compensation for each missed, on-duty and/or interrupted rest period.

43. Plaintiff and other similarly situated employees worked four-hour increments (or major fractions thereof) without being provided with compliant ten (10) minute rest periods. Nonetheless, Plaintiff and other similarly situated employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed, on-duty and/or interrupted rest period as required by California law.

44. Defendants failed to provide Plaintiff and other similarly situated employees working outside with compliant recovery periods, because Defendants did not provide them with *off-duty* access to shade or water when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit.

45. Defendants failed to inform Plaintiff and other similarly situated employees of their right to heat recovery periods, and their right to have off-duty access to shade and water during their shifts while working outside.

46. On information and belief, Defendants did not have any written policy or practice addressing recovery periods, in violation of California law.

47. Plaintiff and other similarly situated employees worked outside at all times during their shifts. The temperature at Plaintiff's and other similarly situated employees' job sites many times exceeded 80 degrees and there were times it hit 100 degrees. Nonetheless, Plaintiff and other similarly situated employees were required to provide their own hats or other protective clothing. Plaintiff and other similarly situated employees did not have enough shade space available to take compliant recovery periods and rest from the sun. Moreover, Plaintiff and other similarly situated employees were not provided with water during hot days for all employees and many times they had to buy or bring their own water.

48. Plaintiff and, upon information and belief, other similarly situated employees inquired into heat recovery periods; nonetheless, Plaintiff was never told to take a break.

49. Plaintiff and other similarly situated employees were not provided with enough tents, canopies, or any other source of shade, nor was there natural shade available throughout the property.

50. Although Defendants failed to provide Plaintiff and other similarly situated employees with compliant recovery periods, Defendants never paid Plaintiff and, on information and belief, other similarly situated employees an additional hour of pay, at the regular rate of pay, as required by California law.

1 51. On a regular and consistent basis, Plaintiff and similarly situated employees were not paid
2 at the proper rate of pay.

3 52. Plaintiff and other similarly situated employees were not properly compensated for all
4 hours worked at the appropriate rate of pay because Defendants required them to work through their meal
5 periods and/or remain on-duty but did not compensate them for this work time. Defendants failed to pay
6 Plaintiff and other similarly situated employees all minimum, overtime and regular wages owed because
7 they failed to pay them for the time they spent working during on-duty meal periods. Defendants regularly
8 required Plaintiff and other similarly situated and/or aggrieved employees to work through their unpaid
9 meal periods due to demanding work schedules and lack of adequate staffing to ensure proper coverage.

10 53. Plaintiff and other similarly situated employees were also required on occasion to purchase
11 their own tools and equipment needed to complete their job duties without reimbursement from the
12 employer. Defendant does not pay Plaintiff, or upon information and belief, its non-exempt employees'
13 twice the minimum wage.

14 54. Defendants failed to reimburse Plaintiff and other similarly situated employees the cost of
15 using their personal cell phones for business related purposes. Defendants required Plaintiff and other
16 similarly situated employees to be available by cell phone and answer/use their cell phones to perform
17 their job duties. Despite being required, these cell phones were not provided by Defendants. Defendants
18 failed to reimburse Plaintiff and other similarly situated employees for the costs associated with using
19 their personal cell phones.

20 55. Defendants failed to properly pay Plaintiff and, on information and belief, other similarly
21 situated employees at least minimum, regular and overtime wages owed for all time suffered or permitted
22 to work during Plaintiff's and other similarly situated employees' employment.

23 56. Furthermore, Defendants did not keep accurate records of the actual hours worked.
24 Plaintiffs and other non-exempt employees worked hours while on-the-clock, but Defendants illegally
25 deducted them and/or shaved the time worked. Instead, Defendants only compensated Plaintiff and, on
26 information and belief, other non-exempt employees, for the hours they were scheduled to work and not
27 for the hours actually worked and on-duty.

28 57. Defendants did not pay Plaintiff and, on information and belief, other non-exempt

1 employees the legally applicable overtime pay at the corresponding hourly rate of pay when Plaintiff and,
2 on information and belief, other non-exempt employees worked in excess of 8 hours in a day or 40 hours
3 in a week. Plaintiff and other non-exempt employees were regularly scheduled to work and in fact worked
4 overtime during their employment with Defendants.

5 58. Defendants have failed to comply with the applicable IWC Wage Order and Labor Code §
6 226(a) by failing to provide accurate itemized wage statements to Plaintiff and other similarly situated
7 employees. The wage statements issued by Defendants do not include the correct number of hours worked,
8 the correct gross and net wages earned, and all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by the employee as required under Labor
10 Code § 226.

11 59. On information and belief, the wage statement omissions and inaccuracies are not a result
12 of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing
13 and intentional omissions by Defendants. In addition, and as a result of these omissions and inaccuracies,
14 Plaintiff and, on information and belief, other similarly situated employees are not promptly and easily
15 able to determine the correct hours worked and/or determine the accurate wages due and owing without
16 reference to other documents and information.

17 60. As a direct result of the aforementioned Labor Code violations, Defendants have not paid
18 Plaintiff and, on information and belief, other similarly situated employees all wages due and payable
19 during and upon separation of employment, including minimum and regular wages for all hours worked,
20 and meal, rest, and recovery periods premium wages, as required by California law.

21 61. To date, Defendants have not paid Plaintiff and, on information and belief, other similarly
22 situated employees all wages owed, including all minimum and regular wages, and meal and rest period
23 premium wages, recovery period premium wages, and have not reimbursed them for all necessary business
24 expenses.

25 **V. THE PAGA REPRESENTATIVE ACTION DESIGNATION**

26 62. Plaintiff re-alleges and incorporates by reference the allegations contained in the
27 paragraphs above, as though fully set forth herein.

28 63. This action is properly suited for a PAGA representative action because:

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

6 b. This action involves allegations of violations of provisions of the Labor Code that
7 provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments,
8 divisions, commissions, boards, agencies or employees;

9 c. Plaintiff is an “aggrieved employee” because he was employed by the alleged
10 violators and had one or more of the alleged violations committed against him;

11 d. On April 25, 2022, Plaintiff satisfied the procedural requirements of Labor Code
12 section 2699.3 by serving the LWDA electronically and Defendant, RD ENGINEERING &
13 CONSTRUCTION, INC., via Certified Mail, with his notice for wage and hour violations and penalties,
14 including the facts and theories to support each violation. A true and correct copy of Plaintiff’s notice and
15 proof of service is attached as **Exhibit A**;

16 e. More than 65 days have passed since Plaintiff served his initial notice via Certified
17 Mail to the LWDA and his employers. Therefore, Plaintiff satisfied all of the administrative requirements
18 to pursue civil penalties against Defendants pursuant to Labor Code sections 2698–99.5;

19 f. Plaintiff files this action pursuant to Labor Code section 2699(a) and (f), on behalf
20 of himself and all other aggrieved employees of Defendants to recover civil penalties that are required to
21 be shared with the LWDA. Plaintiff seeks to recover all applicable civil penalties under PAGA, but only
22 those civil penalties that are required to be shared with the LWDA.

23 **VI. CLASS ACTION DESIGNATION**

24 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
25 paragraphs above, as though fully set forth herein.

26 65. Plaintiff brings Causes of Action One through Eight as a Class Action pursuant to
27 California Code of Civil Procedure § 382 on behalf of himself and all current and former non-exempt
28 employees of Defendants.

66. Plaintiff seeks to represent the following Class and Subclasses, which are defined as:

The Non-Exempt Class: “All current and former non-exempt employees of Defendant, RD ENGINEERING & CONSTRUCTION, INC., who worked in the State of California since four (4) years prior to the filing of this action to the present, plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19.’”

The Recovery Period Class: “All current and former non-exempt employees of Defendant, RD ENGINEERING & CONSTRUCTION, INC., who worked in the State of California and who Defendants required them to work one or more of their shifts outdoors or in an open-air environment area since four (4) years prior to the filing of this action to the present, plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19.’”

The Waiting Time Penalties Subclass: “All members of the Non-Exempt Class and the Recovery Period Class who were not paid all wages owed and whose employment with Defendants ended at any time during the period commencing on the date that is within three (3) years prior to the filing of the action through the present, plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19.’”

67. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

68. Causes of Action One through Eight are appropriately suited for a class action pursuant to section 382 of the Code of Civil Procedure because the following requirements are met:

A. NUMEROSITY

69. The members of the Class and Subclasses are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Class and Subclasses, Plaintiff is informed and believes that the Class and Subclasses likely consist of over 100 individuals.

70. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’ time and payroll records and other personnel records.

1 **B. COMMONALITY**

2 71. Common questions of law and fact exist as to all Class Members and predominate over any
3 questions affecting only individual members of the Class or Subclasses.

4 72. The common questions of law and fact that predominate include, but are not limited to:

- 5 a. Whether Defendants failed to properly relieve the Non-Exempt Class Members of
6 all duties during their meal periods and/or failed to permit the Non-Exempt Class
7 Members to take duty-free, thirty-minute meal periods, before the commencement
8 of their sixth hour of work;
- 9 b. Whether Defendants failed to permit the Non-Exempt Class to take off-duty and
10 paid rest periods of at least 10 minutes for every four hours worked, or major
11 fraction thereof;
- 12 c. Whether Defendants failed to inform the Recovery Period Class of their right to
13 heat recovery periods, and their right to have off-duty access to shade and water
14 during their shifts while working outside;
- 15 d. Whether Defendants failed to provide the Recovery Period Class with any written
16 policy or practice addressing recovery periods, in violation of California law.
- 17 e. Whether Defendants failed to pay one additional hour of pay at the non-exempt
18 employees' regular rate of compensation to the Non-Exempt Class and Recovery
19 Period Class Members when they were not provided with compliant and timely
20 meal and rest periods and/or recovery periods;
- 21 f. Whether Defendants failed to pay Non-Exempt Class Members at least minimum
22 wages and/or all regular wages owed for all hours or fractions of an hour worked
23 and under the control of Defendants;
- 24 g. Whether Defendants failed to properly and accurately record and maintain records
25 of all hours worked and wages earned by Non-Exempt Class Members;
- 26 h. Whether Defendants failed to provide Non-Exempt Class Members reimbursement
27 for all necessary expenditures;
- 28 i. Whether Defendants failed to provide Non-Exempt Class Members and Recovery

Period Class Members with accurate itemized wage statements showing, among other things, the total regular hours worked during the pay period, the applicable hourly rates and the corresponding number of hours worked at each hourly rate, the correct amount of gross and net wages earned, and the name of the legal entity that is the employer;

j. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

k. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

l. Whether Plaintiff and the members of the Proposed Non-Exempt Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

C. TYPICALITY

73. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice, and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

74. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclasses because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. ADEQUACY OF REPRESENTATION

75. Plaintiff has no fundamental conflict of interest with the Class or Subclasses he seeks to represent. Plaintiff will adequately represent and protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and putative class members.

76. Plaintiff retained attorneys who are experienced employment law litigators with significant

wage and hour and class action experience. Counsel who represent Plaintiff and the Class and Subclasses are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

77. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

78. Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7, 512, 1198, and the “Meal Periods” section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

79. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

80. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not employ an employee for a work period of more than five hours per day without providing an employee with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

81. Labor Code § 226.7 requires that employers, including Defendants, provide their employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare Commission, and prohibits employers from requiring any employee “to work during any meal ... period mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of

1 compensation for each workday that the meal ... period is not provided.”

2 82. Labor Code § 1198 states that the “maximum hours of work and standard conditions of
3 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
4 for employees. The employment of any employee for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.”

6 83. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall
7 employ any person for a work period of more than five (5) hours without a meal period of not less than
8 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
9 the meal period may be waived by mutual consent of the employer and the employee.” It further states,
10 “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without
11 providing the employee with a second meal period of not less than 30 minutes, except that if the total
12 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
13 employer and employee only if the first meal period was not waived.”

14 84. The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the
15 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
16 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when
17 the nature of the work prevents an employee from being relieved of all duty and when by written
18 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state
19 that the employee may, in writing, revoke the agreement at any time.”

20 85. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an
21 employer fails to provide an employee a meal period in accordance with the applicable provisions of this
22 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
23 compensation for each workday that the meal period is not provided.”

24 86. Plaintiff and the Non-Exempt Class are non-exempt employees subject to the same
25 policies, practices, and procedures governing the provision and scheduling of meal periods.

26 87. Defendants have a pattern and practice of not providing Plaintiff and the Non-Exempt Class
27 with legally compliant 30-minute off-duty meal periods before the commencement of their sixth hour of
28 work during their shifts, even though they worked more than six (6) hours during their workday.

1 88. Plaintiff and, on information and belief, the Non-Exempt Class are unable to take compliant
2 meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’ illegal policies
3 required Plaintiff and, on information and belief, the Non-Exempt Class to work through their meal
4 periods because Defendants did not schedule adequate coverage.

5 89. Further, Plaintiff and, on information and belief, the Non-Exempt Class members were
6 required to remain on duty at all times to monitor their cellphones or radios and to respond to work-related
7 calls and messages.

8 90. Thus, as a result of Defendants’ policies and practices, Plaintiff’s and Non-Exempt Class
9 members’ meal periods are regularly short, on-duty, late and after the end of the fifth hour, or not taken at
10 all.

11 91. Plaintiff and, on information and belief, the Non-Exempt Class members have not signed
12 a valid on-duty meal period agreement at any point during their employment with Defendants.

13 92. Plaintiff and, on information and belief, the Non-Exempt Class members typically worked
14 more than eight (8) hours per shift and more than forty (40) hours per week.

15 93. Therefore, as a result of Defendants’ conduct, including the conduct alleged herein,
16 Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order
17 when Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free
18 meal period before the commencement of their sixth hour of work.

19 94. Consequently, pursuant to Labor Code § 226.7(b) and the “Meal Periods” section of the
20 Wage Order, Defendants were required to pay Plaintiff and the Non-Exempt Class one additional hour of
21 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the
22 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour
23 of work.

24 95. Despite this obligation, Defendants did not pay Plaintiff and, on information and belief, the
25 Non-Exempt Class one additional hour of pay at each employee’s regular rate of compensation for each
26 day that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal
27 period before the commencement of their sixth hour of work.

28 96. Instead, on information and belief, Defendants have a common policy and practice of

1 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay
2 for the times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-
3 free meal period before the commencement of their sixth hour of work, as required by Labor Code §
4 226.7(b) and the IWC Wage Order.

5 97. Thus, on information and belief, Defendants intentionally refused to perform their
6 obligations to provide meal periods and further failed to compensate Plaintiff and the Non-Exempt Class
7 with all owed meal premium wages at the legal regular rate of pay as set forth by Labor Code § 226.7(b)
8 and the IWC Wage Order.

9 98. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to
10 Defendants' failure to pay an additional hour of pay at their regular rate of pay for each day a legally
11 compliant meal period was not provided and the associated use and enjoyment of compensation due and
12 owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

13 99. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited
14 to, all wages due, monies, and interest to the extent permitted by law.

15 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REST PERIODS**

18 (Violation of Labor Code §§ 226.7, 1198, and the "Rest Periods" section of the
19 Applicable IWC Wage Order)

20 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

21 100. Plaintiff re-alleges and incorporates by reference the allegations contained in the
22 paragraphs above, as though fully set forth herein.

23 101. Labor Code § 226.7 requires employers, including Defendants, to provide to their
24 employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

25 102. Labor Code § 1198 states that the "maximum hours of work and standard conditions of
26 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
27 for employees. The employment of any employee for longer hours than those fixed by the order or under
28 conditions of labor prohibited by the order is unlawful."

103. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

104. On information and belief, Plaintiff and the Non-Exempt Class are non-exempt employees subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

105. On information and belief, Defendants have a pattern and practice of not providing Plaintiff and the Non-Exempt Class with legally compliant 10-minute off-duty rest periods for each four-hour work period, or major fraction thereof.

106. Plaintiff and, on information and belief, the Non-Exempt Class members were unable to take compliant off duty rest periods as a result of Defendants’ policies alleged herein. For example, Defendants’ illegal policies required Plaintiff and, on information and belief, the Non-Exempt Class to work through their rest periods or to remain on-duty because Defendants did not schedule adequate coverage.

107. Plaintiff and, on information and belief, the Non-Exempt Class members are not authorized and permitted to take compliant rest periods because they were required to remain on-duty at all times to monitor and answer their cellphones or radios and respond to work related calls and messages.

108. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest ... period is not provided.”

109. Even though Plaintiff and, on information and belief, Non-Exempt Class members are not authorized and permitted to take off-duty rest periods, Defendants have not paid Plaintiff and the Non-Exempt Class members appropriate rest period premium wages for each day in which Defendants did not

1 authorize and permit Plaintiff and the Non-Exempt Class to take compliant rest periods, in violation of
2 Labor Code § 226.7 and the applicable IWC Wage Order.

3 110. On information and belief, Defendants have a common policy, pattern, and practice of
4 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their legal regular rate
5 of pay for the times that Plaintiff and the Non-Exempt Class members were not authorized to take rest
6 periods of at least 10 minutes for each four-hour work period, or major fraction thereof.

7 111. Plaintiff and the Non-Exempt Class members suffered and continue to suffer losses related
8 to Defendants' failure to pay an additional hour of pay at their regular rate of pay for each day a rest period
9 was not provided and the associated use and enjoyment of compensation due and owing to them as a direct
10 result of Defendants' Labor Code and IWC Wage Order violations.

11 112. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
12 to, any and all wages due, monies, and interest, to the extent permitted by law.

13 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE RECOVERY PERIODS**

16 (Violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395)

17 (Alleged by Plaintiff Individually and on Behalf of the Recovery Period Class

18 Against All Defendants)

19 113. Plaintiff re-alleges and incorporates by reference the allegations contained in the
20 paragraphs above, as though fully set forth herein.

21 114. Labor Code § 226.7(a) states that "'recovery period' means a cooldown period afforded an
22 employee to prevent heat illness."

23 115. Labor Code § 226.7(b) states "[a]n employer shall not require an employee to work during
24 a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order
25 of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
26 Division of Occupational Safety and Health."

27 116. California Code of Regulations, Title 8, § 3395(d)(1) provides that:

28 Shade shall be present when the temperature exceeds 80 degrees Fahrenheit.

When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling [...]

117. California Code of Regulations, Title 8, § 3395(d)(3) further provides that [e]mployees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.

118. California Code of Regulations, Title 8, § 3395(i) further provides that [t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.

119. California Code of Regulations, Title 8, § 3395(c) also provides that Employees shall have access to potable drinking water...including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water...shall be encouraged.

120. Defendants failed to establish, implement, and maintain an effective heat illness prevention plan, and failed to make any such plan available at the worksite to Plaintiff and, on information and belief, to the Recovery Period Class members.

121. Plaintiff and, on information and belief, the Recovery Period Class members were subject to the same policies, practices, and procedures governing the provision and scheduling of recovery periods.

122. Defendants have a pattern and practice of requiring Plaintiff and the Recovery Period Class to remain on duty at all times, and of not providing them with compliant and appropriate recovery periods when the outdoor temperature in their respective work area exceeded 80 degrees Fahrenheit.

123. Labor Code § 226.7(d) requires employers, including Defendants, to provide to Plaintiff and the Recovery Period Class members paid recovery periods.

124. Labor Code § 226.7(c) states that

[I]f an employer fails to provide an employee a...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...recovery period is not provided.

125. Even though Plaintiff and the Recovery Period Class members were not authorized or permitted to take off-duty recovery periods, Defendants did not pay Plaintiff and the Recovery Period Class members the appropriate recovery period premium wages for each day that Defendants did not authorize and permit Plaintiff and the Recovery Period Class to take compliant recovery periods, in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d).

126. Defendants have a common policy, pattern, and practice of failing to inform Plaintiff and the Recovery Period Class of their rights to receive recovery periods and to be paid an hour of pay at their legal regular rate of pay for the times that Plaintiff and the Recovery Period Class members were not authorized to take recovery periods.

127. On information and belief, Defendants did not have any written policy or practice addressing recovery periods, in violation of California Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d).

128. On information and belief, several Recovery Period Class members suffered heat exhaustion, sun burn, and other related heat injuries as a result of Defendants' failure to provide and inform them of their legal rights to receive appropriate recovery periods.

129. Plaintiff and the Recovery Period Class members suffered and continue to suffer losses, injuries and damages related to Defendants' failure to inform them of their right to receive recovery periods and to pay an additional hour of pay at their regular rate of pay for each day a rest period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code, IWC Wage Order and the California Code of Regulations violations.

130. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, and interest, to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM, REGULAR AND OVERTIME WAGES

(Violation of Labor Code §§ 1194, 1197, 1198, and the "Minimum Wages" section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

131. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

132. Labor Code § 1197 provides, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum wage so fixed is unlawful."

133. The "Minimum Wages" section of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum for all hours worked.

134. The applicable IWC Wage Order defines the term "hours worked" 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."

135. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

136. Labor Code §§ 510, 1194, and 1199 require an employer to compensate its employees at the minimum wage rate for all hours worked and compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

137. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class members at least minimum wages for all the time spent working and under the control of Defendants. For

1 example, Plaintiff and, on information and belief, Non-Exempt Class members regularly remained on-
2 duty during their 30-minute meal periods and were not compensated minimum wages for this time.

3 138. Additionally, Plaintiff and, on information and belief, the Non-Exempt Class members
4 were required to monitor their radios and answer calls from supervisors at all times.

5 139. Nonetheless Plaintiff and the Non-Exempt Class were on-duty during part or their entire
6 meal period, Defendants automatically deducted 30 minutes from Plaintiff's and Non-Exempt Class
7 members' time records even when they were not able to take a full, off-duty meal period, and therefore
8 failed to pay Plaintiff and Non-Exempt Class members for all of the time that they spent working or under
9 the control of the Defendants.

10 140. Moreover, Plaintiff and the Non-Exempt Class members were required to answer work-
11 related calls or messages after they had clocked out for the day or during their day off. Plaintiff and, on
12 information and belief, the Non-Exempt Class, were not paid any wages for the calls or messages they
13 answered off-the-clock and/or during their days off.

14 141. Additionally, Defendants failed to pay Plaintiff and, on information and belief, the Non-
15 Exempt Class all overtime wages at the applicable overtime rate of pay.

16 142. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
17 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
18 interest thereon, reasonable attorney's fees, and costs of suit.

19 143. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

21 144. By their policy of requiring Plaintiff and members of the Proposed Class to work without
22 being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a
23 workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½)
24 their regular rate of pay, Defendants willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2,
25 and 1199.

26 145. Plaintiff and the Non-Exempt Class members suffered and continue to suffer losses related
27 to the use and enjoyment of compensation, wages and overtime due and owing to them as a direct result
28 of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at

trial and within the jurisdictional limitations of this Court.

146. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY ALL NECESSARY EXPENDITURES

(Violation of Labor Code § 2802)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

147. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

148. Labor Code § 2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties of employment.

149. Labor Code § 2802(b) states, "[a]ll awards made by a court ... for reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure including, but not limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

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

151. Defendants failed to reimburse Plaintiff and, on information and belief, the Non-Exempt Class members for all necessary expenses that were incurred in the discharge of their job duties. For example, Plaintiff, and on information and belief, the Non-Exempt Class members had to monitor and use their personal cell phones for work-related purposes.

152. Defendants did not reimburse Plaintiff and on information and belief, the Non-Exempt

1 Class for the use of their personal cell phones.

2 153. Plaintiff and the Non-Exempt Class suffered, and continue to suffer, losses related to the
3 use and enjoyment of monies due and owing to them as a direct result of Defendants' unlawful acts and
4 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional
5 limitations of this Court.

6 154. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
7 to, restitution, monies, interest, attorney's fees, and costs to the extent permitted by law.

8 155. WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **SIXTH CAUSE OF ACTION**

10 **ILLEGAL DEDUCTIONS FROM WAGES**

11 (Violation of Labor Code §§ 221, 222, 223, and 224)

12 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

13 156. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 paragraphs above, as though fully set forth herein.

15 157. Plaintiff and the Non-Exempt Class members are or were non-exempt employees of
16 Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.

17 158. Labor Code § 221 disallows an employer from "collect[ing] or receiv[ing] from an
18 employee any part of wages theretofore paid by said employer to said employee."

19 159. Defendants illegally deducted earned wages from Plaintiff and the Non-Exempt Class. For
20 example, Defendants had a pattern, policy and practice of deducting up to one-hours' worth of wages from
21 Plaintiff and the Non-Exempt Class members from every shift they worked without any prior authorization
22 from them or notice.

23 160. As a direct result of Defendants' violations alleged herein, Plaintiff and Non-Exempt Class
24 members suffered and continue to suffer, substantial harm, including the use and enjoyment of such
25 monies, lost interest on such monies and expenses, and attorney's fees and costs in seeking to compel
26 Defendants to fully perform their obligations under state law, all to their respective damage in amounts
27 according to proof at trial and within the jurisdictional limitations of this Court.

28 161. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available

1 damages by Labor Code §§ 221, *et seq.*, reasonable attorney's fees and costs of suit, and declaratory relief.
2 The exact amount of damages will be in an amount to be proved at time of trial.

3 162. WHEREFORE, Plaintiff prays for relief as hereinafter requested.

4 **SEVENTH CAUSE OF ACTION**

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

6 (Violation of Labor Code §§ 226, 1198, and the "Records" section of the
7 Applicable IWC Wage Order)

8 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class and the Recovery Period
9 Class Against All Defendants)

10 163. Plaintiff re-alleges and incorporates by reference the allegations contained in the
11 paragraphs above, as though fully set forth herein.

12 164. Labor Code § 226(a) requires that employers, including Defendants, furnish their
13 employees with each wage payment an accurate and itemized writing that shows gross wages earned, total
14 hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee
15 is paid, the name of the employee and the portion of his or her social security number, the name and
16 address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate by the employee.

18 165. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of
19 all actual damages or the amount specified in Labor Code § 226 per violation.

20 166. Labor Code § 226(e)(2)(B) states, in pertinent part, "an employee is deemed to suffer injury
21 for purposes of this subdivision if the employer fails to provide accurate and complete information as
22 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
23 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount
24 of the gross wages or net wages paid to the employee during the pay period or any of the other information
25 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
26 of subdivision (a)."

27 167. Labor Code § 226(h) states, "An employee may also bring an action for injunctive relief to
28 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

168. Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class members an accurate itemized wage statement with each wage payment as required by Labor Code § 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Non-Exempt Class with each wage payment an accurate wage statement showing, among other things, the inclusive dates of the period for which the employee is paid, the total regular hours worked during the pay period, the corresponding gross and net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

169. Defendants have failed to maintain accurate itemized wage statements that include the total hours worked by the employee under Labor Code § 226(a)(2) and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee under Labor Code § 226(a)(9).

170. Defendants' failure to provide and maintain accurate wage statements deprived Plaintiff and members of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the Non-Exempt Class suffered actual damages as a result.

171. Defendants' failure to provide accurate itemized wage statements constitutes an injury as defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all actual damages or the amount specified in section 226 per violation.

172. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations, in an amount to be shown according to proof at trial.

173. Plaintiff seeks to recover all available remedies including, but not limited to, damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code §§ 201, 202, and 203)

(Alleged by Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass
Against All Defendants)

174. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

175. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and all wages due and owing to an employee not having a written contract for a definite period, who quits his or her employment, within 72 hours of the employee quitting his or her employment, 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.

176. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an action is commenced, but the wages shall not continue for more than 30 days.

177. As a result of Defendants' conduct during the applicable statutory period, Defendants willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all wages due and owing to them, including minimum wages and regular wages for all the time they were suffered or permitted to work or were engaged in work under Defendants' control, as well as all meal period premiums and rest period premiums owed within the time required by Labor Code §§ 201 and 202, as applicable.

178. To date, Plaintiff has not yet received all wages due and payable including, but not limited to, minimum wages and regular wages, and meal and rest period premium wages owing to him. On information and belief, members of the Waiting Time Penalties Subclass have not yet received all minimum wages and regular wages, and meal and rest premium wages, and recovery period premiums due and owing to them.

179. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time

Penalties Subclass members suffered, and continue to suffer, losses related to the use and enjoyment of wages due and owing to them, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

180. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION

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

(Alleged by Plaintiff on Behalf of the Non-Exempt Class Against All Defendants)

181. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

182. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

183. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business & Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to provide proper recovery periods and pay Plaintiff and the Recovery Period Class premium wages for failure to provide compliant recovery periods; (iv) failure to pay Plaintiff and the Non-Exempt Class all regular, overtime and minimum wages for all hours suffered or permitted to work and under the control of Defendants; (v) failure to reimburse Plaintiff and the Non-Exempt Class for all necessary business expenses; (vi) failure to provide Plaintiff and the Non-Exempt Class with accurate itemized wage statements; and (vii) failure to timely pay Plaintiff and members of the Waiting Time Penalties Subclass all wages owed upon separation of their employment with Defendants.

184. Defendants intentionally avoided paying Plaintiff, the Non-Exempt Class and Recovery Period Class all wages and/or monies, and other financial obligations attached thereto, to create for

Defendants an artificially lower cost of doing business, and thus, undercut its competitors.

185. Defendants lowered their costs of doing business by paying Plaintiff, the Non-Exempt Class and Recovery Period Class an amount less than what is required by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff, the Non-Exempt Class members, and Recovery Period Class members to perform work without fair compensation and benefits.

186. Defendants held themselves out to Plaintiff, the Non-Exempt Class and the Recovery Period Class members as being knowledgeable about, and adhering to, the employment laws of California at all times relevant herein. Plaintiff and the Non-Exempt Class members relied on and believed in Defendants' representation concerning Defendants' adherence to the California laws, all to their detriment.

187. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding money owed to the class and withholding wages, compensation and benefits, which are all the property of Plaintiff, the Non-Exempt Class, and the Recovery Period Class in violation of the California Labor Code and the IWC Wage Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under California Business & Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition, Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

188. Business & Professions Code § 17204, states, in relevant part, "[a]ctions for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

189. Defendants acquired money and property owed to Plaintiff, the Non-Exempt Class and Recovery Period Class by means of an unlawful practice that constitutes unfair competition as defined by Business & Professions Code § 17200, *et seq.*

190. Plaintiff, the Non-Exempt Class and Recovery Period Class are persons in interest under Business & Professions Code § 17203 to whom money and property should be restored. Business & Professions Code § 17203 states, in relevant part, that "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204."

191. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business & Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the putative classes.

192. Pursuant to Business & Professions Code § 17203, "[t]he court may make such orders or judgments, 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."

193. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff, the Non-Exempt Class and Recovery Period Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203, and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

194. Plaintiff, the Non-Exempt Class and Recovery Period Class suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

195. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt Class and the Recovery Class members including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

TENTH CAUSE OF ACTION

REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE

PRIVATE ATTORNEYS GENERAL ACT (PAGA)

(Violation of Labor Code section 2698, *et seq.*)

(Alleged by Plaintiff on Behalf of All Aggrieved Employees of Defendants Against All Defendants)

164. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

165. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,

boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

166. This cause of action involves allegations of violations of the Labor Code sections 201, 202, 204, 221, 223, 224, 225.5, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 11942, 1197, 11971, 1198, and 2802 which, pursuant to Labor Code section 2699.5, provides for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

167. Defendants employed Plaintiff and Plaintiff had one or more of the alleged violations committed against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged violators employed him and had one or more of the alleged violations committed against him. As such, Plaintiff is properly suited to represent the interests of other aggrieved employees in a PAGA Representative action.

168. Plaintiff exhausted his obligation to provide administrative notice and now seeks the recovery of all available civil penalties under Labor Code section 2699(a), but only those civil penalties that are required to be shared with the LWDA. Plaintiff expressly disclaims the recovery of any individual/victim specific relief or underpaid wages.

169. For all provisions of the Labor Code for which a civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendants, and each of them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

170. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff and aggrieved employees lawfully compliant meal periods and by failing to pay them meal period premium wages for each day a meal period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

171. Defendants violated Labor Code §§ 226.7(b) and 226.7(c) by failing to provide Plaintiff and aggrieved employees lawfully compliant rest periods and by failing to pay them rest period premium wages for each day a rest period was not provided. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226.7(b) and 226.7(c), and \$200 for each aggrieved employee per pay period for each subsequent violation.

172. Defendants violated Labor Code §§ 223, 510, 1194, and 1198 by not paying Plaintiff and other aggrieved employees all overtime wages earned for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

173. Defendants violated Labor Code section 2802 by failing to reimburse Plaintiff and other aggrieved employees for use of their cell phones and other required items for the discharge of their duties. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code section 2802, and \$200 for each aggrieved employee per pay period for each subsequent violation.

174. Defendants violated Labor Code sections 221 and 223 by unlawfully deducting amounts for required apparel and other required items from Plaintiff's and other aggrieved employees' wages without prior authorization, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 221 and 223, and \$200 for each aggrieved employee per pay period for each subsequent violation.

175. Under Labor Code § 225.5, Defendants, in addition to, and entirely independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 221 and 223 as follows: (1) For an initial violation, one hundred dollars (\$100.00) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200.00) for each failure to pay

1 each employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on
2 behalf of the Labor Commissioner.

3 176. Defendants violated Labor Code §§ 201, 202, and 1198 by not paying Plaintiff and
4 aggrieved employees all minimum, regular, overtime, and meal premium wages owed by the time set forth
5 by law upon their separation of employment, as alleged herein. Thus, under Labor Code § 2699(f)(2),
6 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial
7 violation of Labor Code §§ 201, 202, and 1198, and \$200 for each aggrieved employee per pay period for
8 each subsequent violation.

9 177. Defendants violated Labor Code §§ 204 and 1198 by not paying Plaintiff and aggrieved
10 employees all minimum, regular, and overtime wages owed, and meal period premium wages owed by
11 the time set forth by law during their employment, as alleged herein. Thus, under Labor Code § 2699(f)(2),
12 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial
13 violation of Labor Code §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each
14 subsequent violation.

15 178. Under Labor Code § 210(a), Defendants, in addition to, and entirely independent and apart
16 from any other penalty, are subject to a civil penalty for failing to pay the wages of each aggrieved
17 employee as provided in Labor Code § 204, as follows: (1) For any initial violation, one hundred dollars
18 (\$100) for each failure to pay each aggrieved employee. (2) For each subsequent violation, or any willful
19 or intentional violation, two hundred dollars (\$200) for each failure to pay each aggrieved employee, plus
20 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor
21 Commissioner.

22 179. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 by failing to maintain
23 records detailing the start and end times of work shifts and meal periods, and knowingly and intentionally
24 failing to maintain and provide Plaintiff and other aggrieved employees of Defendants with wage
25 statements itemizing accurately all information required by Labor Code § 226(a), as alleged herein,
26 including the total hours worked, all regular hours worked, all overtime hours worked, the applicable
27 hourly rate per hour worked, and the total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants
28 are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation

1 of Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each
2 subsequent violation.

3 180. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
4 violation in an initial citation and \$1,000 for each violation in a subsequent citation, for which the
5 employer fails to provide the employee a wage deduction statement or fails to keep the records required
6 in subdivision (a) of section 226.

7 181. Labor Code § 1174.5 provides for a civil penalty of \$500 for any person employing labor
8 who willfully fails to maintain accurate and complete records required by subdivision (d) of section 1174.

9 182. For bringing this action, Plaintiff is additionally entitled to attorney's fees and costs
10 incurred herein.

11 183. Plaintiff seeks to recover civil penalties on behalf of himself and other aggrieved
12 employees for Defendants' violations of the Labor Code including, but not limited to, Defendants'
13 violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 224, 225.5, 226, 226.7, 512, 558, 1174, 1174.5,
14 1194, 1194.2, 1197, 1197.1, 1198 and 2802 pursuant to Labor Code section 2698, *et seq.* The exact amount
15 of the applicable penalties is in an amount to be shown according to proof at trial and within the
16 jurisdictional limitations of this Court.

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 20 a. For general damages;
- 21 b. For special damages;
- 22 c. For an award of liquidated damages to the extent permissible by Labor Code §
23 1194.2;
- 24 d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
25 law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5,
26 218.6, 226, and 1194;
- 27 e. For statutory penalties to the extent permitted by law, including those pursuant to
28 the Labor Code and the Orders of the Industrial Welfare Commission;

- f. For restitution as provided by Business & Professions Code § 17200, *et seq.*;
- g. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business & Professions Code § 17200, *et seq.*;
- h. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, minimum wages and regular wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- i. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- j. For penalties to the extent permitted pursuant to the Labor Code and the applicable IWC Wage Order including, but not limited to, waiting time penalties under Labor Code § 203 and penalties under Labor Code §§ 226 and 1198.5.
- k. For injunctive relief as provided by the Labor Code including, but not limited to, Labor Code § 226(h), and Business & Professions Code § 17200, *et seq.*
- l. For indemnification of all losses incurred as a result of employment with Defendants, with interest;
- m. For pre- and post-judgement interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- n. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- o. For an accounting to determine all money wrongfully obtained and held by Defendants;
- p. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 204, 221, 223, 224, 225.5, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2 1197,

1197.1, 1198, and 2802, as well as the LWO, the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission;

- q. For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- r. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act;
- s. For such civil penalties that are required to be shared with the LWDA for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid; and
- t. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: June 30, 2022

GRAHAMHOLLIS APC

By: _____

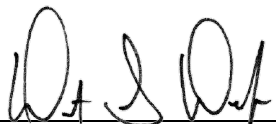

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EXHIBIT A

April 25, 2022

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VIA ONLINE ELECTRONIC FILING

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

CERTIFIED MAIL (RETURN RECEIPT)

RD Engineering & Construction, Inc.
1660 N. Magnolia Ave.
El Cajon, CA 92020

RD Engineering & Construction, Inc.
c/o Robert Dale Davison, Agent for Service of Process
1660 N. Magnolia Ave.
El Cajon, CA 92020

**Re: Ramon J. Gomez's Wage and Hour Claims Against RD
Engineering & Construction, Inc.**

Dear California Labor and Workforce Development Agency and RD Engineering & Construction, Inc.:

Please be advised that Ramon Gomez ("Claimant") has retained our firm to represent him for claims against his former employer RD Engineering & Construction, Inc. ("the Company").

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

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant also intends to represent all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during their employment (the "Aggrieved Employees").

///

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Alyssa Smith

Allison Schubert

Dustin S. Delp

Alex Kuner

*Provisionally Licensed Lawyer

FACTUAL BACKGROUND

RD Engineering & Construction, Inc. is a California company that builds, maintains, and repairs telecommunication towers. Robert Davidson, Jr. is the President of RD Engineering & Construction, Inc. Claimant worked for the Company as a non-exempt employee at all times. He worked as a tower hand and was assigned to projects as he was needed. Claimant worked for the Company from December of 2020 until he was terminated in December of 2021.

Claimant was typically scheduled to work five days a week, sometimes six days, with shifts eight to twelve plus hours in a day. At all times, Claimant was a non-exempt employee and was paid an hourly rate of \$22.00 per hour for day shifts and \$24.00 per hour for night shifts. Claimant also received other non-discretionary incentive pay and/or shift differentials during his employment with the Company.

Claimant's job duties involved, but were not limited to, climbing telecommunication towers for necessary maintenance and repairs.

The Company denied Claimant and other aggrieved employees in California specific rights afforded to them under the California Labor Code and the IWC Wage Order. Specifically, the Company failed to provide them with legally compliant meal and rest periods or pay them meal and rest period premiums at the legal regular rate of pay, failed to timely pay them all minimum, regular, and overtime wages owed, further failed to pay the overtime at the applicable overtime rate of pay, failed to maintain accurate records, failed to issue accurate itemized wage statements, and failed to timely pay all wages due during and upon separation of employment.

For example, the Company did not provide Claimant and, on information and belief, other aggrieved employees the opportunity to take compliant 30-minute, off-duty meal periods. Rather, the Company required Claimant and, on information and belief, other aggrieved employees to work through their meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of their fifth hour of work.

Claimant and other aggrieved employees were not informed of their right to take a 30-minute, off-duty, meal period, before the end of their fifth hour of work. Claimant and other aggrieved employees were only allowed to eat upon the completion of a project, working for a consecutive period of five to over eight hours at a time, without an opportunity to eat, because the Company would pressure them to work through meal and rest periods. On other occasions, Claimant and other aggrieved employees were only allowed to take less than 30-minutes to eat, on duty, before or while driving to another project or location. Many times, Claimant ate his lunch while driving to another location and didn't have an opportunity to take a 30-minute, off-duty, meal period. In the event that Claimant and, on information and belief, other aggrieved employees worked through their meal period, the Company would engage in time-shaving by deducting approximately one hour of pay per shift so as to appear compliant with the Labor Code's mandatory meal period requirements for its non-exempt employees.

Claimant and, on information and belief, other aggrieved employees, never signed a valid on-duty meal period agreement during their employment with the Company. Although Claimant and, on information and belief, other aggrieved employees did not receive legally compliant meal periods, the Company has a pattern and practice of *never* paying Claimant and other aggrieved employees the additional

one hour of pay at the employee's regular rate of pay as required under Labor Code section 226.7 and the applicable IWC Wage Order. Accordingly, the Company owes Claimant and other aggrieved employees a meal period premium for each workday that Claimant and other aggrieved employees were not provided with a compliant meal period.

The Company further failed to maintain a policy informing Claimant and other aggrieved employees of their right of taking off-duty rest breaks of at least 10-minutes for every four-hour work period, or major fraction thereof, and of the right of being compensated with one (1) hour of wages at the regular rate of compensation for each missed, on-duty and/or interrupted rest period.

For example, Claimant and other employees were never informed of their right to take off-duty, rest breaks of at least 10-minutes for every four-hour work period, or major fraction thereof. Claimant and other employees were never dismissed or instructed by their supervisors to take a rest break. Claimant and other employees were only allowed to stop working upon the completion of a project, working for a consecutive period of five to over eight hours at a time, without an opportunity to rest, because the Company would not allow them to take off-duty breaks once a project had started. Regularly, Claimant and other employees would not take off-duty rest breaks of at least 10-minutes for every four-hour work period, or major fraction thereof.

For these same reasons, the Company also did not authorize or permit Claimant and, on information and belief, other aggrieved employees to take ten-minute, uninterrupted rest periods every four hours worked or major fraction thereof. Claimant and other aggrieved employees were instructed not to take any breaks and to continue working until the job or project was finished.

In addition to the reasons above, Claimant and other aggrieved employees were never provided rest breaks due to having to remain on-duty and monitor telecommunication towers and machinery throughout their shifts. Similarly, despite the fact that Claimant and, on information and belief, other aggrieved employees did not receive off-duty rest periods, the Company has a pattern and practice of *never* paying Claimant and other aggrieved employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code section 226.7 and the applicable IWC Wage Order.

The Company failed to provide Claimant and other aggrieved employees working outside in the sun with complaint recovery periods, because the Company did not provide them with off-duty access to shade and water when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Company further failed to inform Claimant and other aggrieved employees of their right to heat recovery periods, and their right to have off-duty access to shade and water during their shifts while working outside. The Company did not have any written policy or practice addressing recovery periods, in violation of California law.

Claimant and other aggrieved employees frequently worked outside at all times during their shifts. The temperature at Claimant's and other aggrieved employees' job sites many times exceeded 80 degrees and commonly hit 105 or 110 degrees. Moreover, the Company did not provide Claimant and, on information and belief, other aggrieved employees with water. Claimant and, on information and belief, other aggrieved employees had to ensure to buy and prepare enough water for their shifts regularly. Claimant and, on information and belief, other aggrieved employees were not allowed to take any recovery periods to access the shade, at any point during their shift, because Claimant and other aggrieved employees

had to maintain the machinery operating, at all times, until the project or job was completed. Otherwise, the Company owner would get upset due to slowed down production.

The Company failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods, as the Company did not provide them off-duty access to shade when the outdoor temperature at the worksites exceeded 80 degrees Fahrenheit. The Company likewise did not take the required "High Heat Procedures" on days when the temperature exceeded 95 degrees Fahrenheit, because the Company did not provide Claimant and other aggrieved employees with an effective means of communication, the Company did not observe employees for alertness and signs or symptoms of heat illness, the Company did not designate one or more employees at the worksite to call for emergency medical services if necessary, the Company did not provide reminders to drink plenty of water throughout the workday, the Company did not hold pre-shift meetings to review the "High Heat Procedures," and the Company did not ensure that Claimant and other aggrieved employees take ten-minute cool-down periods every two hours. The Company also failed to pay Claimant and, on information and belief, other aggrieved employees one additional hour of pay for all the days they were not provided with compliant recovery periods.

Further, Claimant and, on information and belief, other aggrieved employees were not paid all minimum, regular, and overtime wages owed for all of the time that they were on-duty and working for the Company or were subject to the Company's control. For example, the Company had the pattern and practice of not paying Claimant and other aggrieved employees for the time spent working during on-duty meal periods. Moreover, Claimant and, on information and belief, other aggrieved employees were not paid at the proper hourly rate for overnight shifts. Thus, Claimant and, on information and belief, other aggrieved employees, were not paid all minimum, regular, and overtime wages for all hours worked.

As a direct result of the Company's illegal policies and procedures, the Company further failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' time worked and wages paid, in violation of California law. For example, the Company failed to issue wage statements with all information required by Labor Code section 226.

Moreover, wage statements issued by the Company did not include the last four digits of the employee's social security number or an employee identification number other than a social security number, the address of the legal entity that is the employer, the total regular and overtime hours worked, the applicable hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross and net wages earned as required under Labor Code section 226.

Lastly, as a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, other aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal and rest period premium wages, as required pursuant to Labor Code sections 201, 202, and 204.

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

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

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

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

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

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

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to and complies with Labor Code Section 512.”

The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” The Wage Order further states, “[r]est periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the

work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same period.”

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

As set forth above, the Company failed to provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and did not authorize and permit Claimant and, on information and belief, other aggrieved employees to take legally compliant rest periods, as required by California law. The Company failed to pay Claimant and, on information and belief, other aggrieved employees one-hour of premium wages for each day a compliant meal period was not provided and one-hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE RECOVERY PERIODS

(Labor Code Section 226.7 and California Code of Regulations, Title 8, Section 3395)

Labor Code section 226.7(a) states that a “recovery period” is a “cooldown period afforded an employee to prevent heat illness.” Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a...recovery period mandated pursuant 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.” Labor Code 226.7(c) states: “If an employer fails to provide an employee a...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...recovery period is not provided.”

California Code of Regulations, Title 8, Section 3395(d)(1) states: “Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling....” Section 3395(d)(3) further states: “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.”

Further, because the Company is a construction company, Claimant asserts that it is subject to the heightened “High Heat Procedures “of California Code of Regulations, Title 8, Section 3395(e), which requires an employer to “implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit.” These requirements are additional measures beyond what is required by the prior portions of Section 3395.

These procedures shall include the following to the extent practicable:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Observing employees for alertness and signs or symptoms of heat illness. The employer shall ensure effective employee observation/monitoring by implementing one or more of the following: (A) Supervisor or designee observation of 20 or fewer employees, or (b) Mandatory buddy system, or (C) Regular communication with sole employee such as by radio or cellular phone, or (D) Other effective means of observation.

(3) Designating one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available.

(4) Reminding employees throughout the work shift to drink plenty of water.

(5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.

(6) For employees employed in agriculture, the following shall also apply: When temperatures reach 95 degrees or above, the employer shall ensure that the employee takes a minimum ten minute net preventative cool-down rest period every two hours. The preventative cool-down rest period required by this paragraph may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal or rest period thus resulting in no additional preventative cool-down rest period required in an eight hour workday. If the workday will extend beyond eight hours, then an additional preventative cool-down rest period will be required at the conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another preventative cool-down rest period will be required at the conclusion of the tenth hour and so on. For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code Section 226.7(a).

California Code of Regulations, Title 8, Section 3395(h) also includes training requirements on several topics including, but not limited to:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment, and

(B) The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation.

As set forth above, the Company failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods. Even if a recovery period was taken, the Company did not provide the employees with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Company likewise did not take the required "High Heat Procedures" on days when the temperature exceeded 95 degrees Fahrenheit. Despite this, the Company also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

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

Labor Code section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Labor Code section 1197.1 provides that, "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..." Section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 510 states, "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Order mandate the same requirements.

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

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

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

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

The Company failed to provide Claimant and, on information and belief, other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not include the correct total of regular and overtime hours worked, the correct applicable hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross and net wages earned, as required under Labor Code section 226. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

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

Labor Code section 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code section 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” The requirements of Labor Code section 204 are “deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days

following the close of the payroll period. Labor Code section 204(d). Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

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

Labor Code section 203(a) states, in pertinent part, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

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

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

(Labor Code sections 558, 558.1, and 1197.1)

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

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

This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

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

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),
558, 1194, 1194.2, 1197.1, and 2699, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2699, *et seq.*, among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation, and 100% of the underpaid wages. Accordingly, the Company is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

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CONCLUSION

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

Sincerely,



Vilmarie Cordero



April 27, 2022

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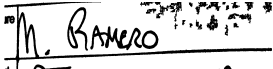
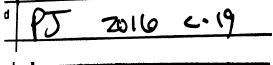
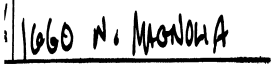
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Location:	EL CAJON, CA 92020
Postal Product:	First-Class Mail®
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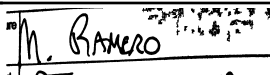
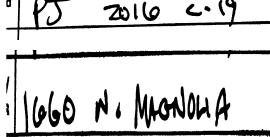
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