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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MICHELLE K. CARRILLO, on behalf of
herself and all others similarly situated,

Plaintiffs,

v.

ADVANCED BIONICS, LLC, a Delaware
limited liability company; and Does 1 to 50,
inclusive,

Defendants.

CLASS ACTION

Case No. 25STCV03858

**FIRST AMENDED COMPLAINT
(AMENDED AS A MATTER OF
RIGHT UNDER LABOR CODE §
2699.3(a)(2)(C)) FOR:**

- 1. FAILURE TO PAY ALL WAGES;**
- 2. FAILURE TO PAY ALL WAGES
AT THE LEGAL OVERTIME PAY
RATE;**
- 3. FAILURE TO PAY PREMIUM
WAGES AT THE LEGAL PAY
RATE;**
- 4. FAILURE TO FULLY
REIMBURSE WORK EXPENSES;**
- 5. DERIVATIVE FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE
STATEMENTS;**
- 6. INDEPENDENT FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE
STATEMENTS;**
- 7. DERIVATIVE VIOLATIONS OF
LABOR CODE §§ 201-202;**
- 8. INDEPENDENT VIOLATIONS OF
LABOR CODE §§ 201-202;**
- 9. PENALTIES UNDER LABOR
CODE § 2699; AND**
- 10. UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Action filed: February 10, 2025
Trial date: None Set

1 Plaintiff Michelle K. Carrillo, an individual on behalf of herself and all others similarly
2 situated (collectively referred to as “Plaintiffs”), hereby files this First Amended Complaint
3 (amended as a matter of right under Labor Code § 2699.3(a)(2)(C)) against Defendant Advanced
4 Bionics, LLC and Does 1 to 50 (collectively referred to as “Defendants”). Plaintiffs are informed
5 and believe, and on the basis of that information and belief, allege as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a civil action seeking recovery for Defendants’ violations of the California
9 Labor Code, California Business and Professions Code, the applicable Wage Orders issued by
10 the California Industrial Welfare Commission (the “IWC Wage Orders”) and related common law
11 principles.

12 2. Plaintiffs’ action seeks monetary damages including full restitution from
13 Defendants as a result of Defendants’ unlawful, fraudulent, and/or unfair business practices.

14 3. The acts complained of herein occurred, occur and will occur, at least in part,
15 within the time period from four years preceding the filing of the original Complaint herein, up
16 to and through the time of trial for this matter (although this should not automatically be
17 considered the statute of limitations for any cause of action herein).

18 **RELEVANT JOB TITLES**

19 4. For introductory and general information only (and not to be considered a
20 proposed class definition), the relevant individuals in this action are Defendants’ non-exempt
21 employees who were subjected to Defendants’ policies and practices as described herein. Any
22 differences in job activities between the different individuals in these positions were and are
23 legally insignificant to the issues presented by this action.

24 **SUMMARY OF CLAIMS**

25 5. With regard to Defendants’ non-exempt employees, Defendants have:

26 a. Failed to pay straight time, minimum, and/or overtime wages for all hours
27 worked;

28 b. Failed to pay all overtime wages at the legal overtime pay rate;

- c. Failed to pay meal and/or rest period penalty premium wages at the legal pay rate;
- d. Failed to reimburse for all work-related expenses;
- e. Derivatively failed to timely furnish accurate itemized wage statements;
- f. Independently failed to timely furnish accurate itemized wage statements;
- g. Derivatively violated Labor Code §§ 201-202;
- h. Independently violated Labor Code §§ 201-202;
- i. Incurred penalties under Labor Code §§ 2698, et seq.; and
- j. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF MICHELLE K. CARRILLO

6. Plaintiff Michelle K. Carrillo is an individual over the age of 18 and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff Michelle K. Carrillo worked for Defendants as a Product Builder from approximately December of 2019 to June 18, 2024, in Valencia, California, which is in Los Angeles County, California.

8. Plaintiff Michelle K. Carrillo seeks recovery herein from Defendants because with regard to Plaintiff Michelle K. Carrillo, while acting for Defendants in her capacity as a non-exempt employee, Defendants have:

- a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;
- b. Failed to pay all overtime wages at the legal overtime pay rate;
- c. Failed to pay meal and/or rest period penalty premium wages at the legal pay rate;
- d. Failed to reimburse for all work-related expenses;
- e. Derivatively failed to timely furnish accurate itemized wage statements;
- f. Independently failed to timely furnish accurate itemized wage statements;

- g. Derivatively violated Labor Code §§ 201-202;
- h. Independently violated Labor Code §§ 201-202;
- i. Incurred penalties under Labor Code §§ 2698, et seq.; and
- j. Conducted unfair business practices.

DEFENDANT ADVANCED BIONICS, LLC

9. Defendant Advanced Bionics, LLC, is now and/or at all times mentioned in this Complaint was a Delaware limited liability company and the owner and operator of an industry, business and/or facilities licensed to do business and actually doing business in the State of California.

DOES 1 TO 50, INCLUSIVE

10. Does 1 to 50, inclusive, are now and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

11. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of Does 1 to 50, inclusive and for that reason, Does 1 to 50 are sued under such fictitious names under California Code of Civil Procedure § 474.

12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint. Defendants, and each of them, directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs.

14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants, and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all

times mentioned in this Complaint were acting within the course and scope of that agency, servitude, and/or employment.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope and in pursuance of said joint venture, partnership, and common enterprise.

17. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

18. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

19. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.

JURISDICTION AND VENUE

20. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

21. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

22. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiff Michelle K. Carrillo and the members of the putative Classes herein were all California citizens and Defendant Advanced Bionics, LLC, is a Delaware limited liability company. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

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23. Venue is proper in Los Angeles County under Code of Civil Procedure §§ 395(a) and 395.5, in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CLASS ACTION ALLEGATIONS

24. Code of Civil Procedure § 382 provides in pertinent part, “[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

25. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

- a. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were subjected to Defendants' policies and practices regarding the payment of straight time, minimum and/or overtime wages as specifically described herein (hereinafter, the "Wage Class");
- b. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were subjected to Defendants' policies and practices regarding the calculation of overtime pay as specifically described herein (hereinafter, the "Overtime Rate Class");
- c. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were subjected to Defendants' policies and practices regarding the payment of meal and/or rest period penalty premium wages as specifically described herein (hereinafter, the "Premium Rate Class");
- d. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were subjected to

Defendants’ policies and practices regarding business expense reimbursement as specifically described herein (hereinafter, the “Reimbursements Class”);

e. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Derivative Wage Statement Class”);

f. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Independent Wage Statement Class”);

g. All formerly-employed California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Derivative LC 203 Class”);

h. All formerly-employed California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Independent LC 203 Class”); and

i. All California citizens employed by Defendants as non-exempt employee (as defined, supra) during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described herein (hereinafter, the “17200 Class”).

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1 26. The Wage Class, Overtime Rate Class, Premium Rate Class, Reimbursements
2 Class, Derivative Wage Statement Class, Independent Wage Statement Class, Derivative LC 203
3 Class, Independent LC 203 Class, and 17200 Class are herein collectively referred to as the
4 “Classes.”

5 27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
6 necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a
7 class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

8 28. Numerosity (Code of Civil Procedure § 382):

- 9 a. The potential quantity of members of the Classes as defined is so numerous
10 that joinder of all members is unfeasible and impractical;
- 11 b. The disposition of the claims of the members of the Classes through this class
12 action will benefit both the parties and this Court;
- 13 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
14 however, it is estimated that the membership of the Classes numbers greater
15 than 100 individuals; and
- 16 d. The quantity and identity of such membership is readily ascertainable via
17 inspection of Defendants’ records.

18 29. Superiority (Code of Civil Procedure § 382): The nature of this action and the
19 nature of the laws available to Plaintiffs make the use of the class action format particularly
20 efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein,
21 as follows:

- 22 a. California has a public policy that encourages the use of the class action
23 device;
- 24 b. By establishing a technique whereby the claims of many individuals can be
25 resolved at the same time, the class suit both eliminates the possibility of
26 repetitious litigation and provides small claimants with a method of obtaining
27 redress for claims which would otherwise be too small to warrant individual
28 litigation;

- 1 c. This case involves large corporate Defendants and a large number of
2 individual Class members with many relatively small claims and common
3 issues of law and fact;
- 4 d. If each individual member of the Classes was required to file an individual
5 lawsuit, the large corporate Defendants would necessarily gain an
6 unconscionable advantage because Defendants would be able to exploit and
7 overwhelm the limited resources of each individual member of the Classes
8 with Defendants' vastly superior financial and legal resources;
- 9 e. Requiring each individual member of the Classes to pursue an individual
10 remedy would also discourage the assertion of lawful claims by the members
11 of the Classes who would be disinclined to pursue an action against
12 Defendants because of an appreciable and justifiable fear of retaliation and
13 permanent damage to their lives, careers, and well-being;
- 14 f. Proof of a common business practice or factual pattern, of which the members
15 of the Classes experienced, is representative of the Classes herein and will
16 establish the right of each of the members of the Classes to recover on the
17 causes of action alleged herein;
- 18 g. Absent class treatment, the prosecution of separate actions by the individual
19 members of the Classes, even if possible, would likely create:
- 20 i) a substantial risk of each individual plaintiff presenting in separate,
21 duplicative proceedings the same or essentially similar arguments and
22 evidence, including expert testimony;
- 23 ii) a multiplicity of trials conducted at enormous expense to both the
24 judicial system and the litigants;
- 25 iii) inconsistent or varying verdicts or adjudications with respect to the
26 individual members of the Classes against Defendants;
- 27 iv) potentially incompatible standards of conduct for Defendants; and
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1 v) potentially incompatible legal determinations with respect to individual
2 members of the Classes which would, as a practical matter, be
3 dispositive of the interest of the other members of the Classes who are
4 not parties to the adjudications or which would substantially impair or
5 impede the ability of the members of the Classes to protect their
6 interests.

7 h. The claims of the individual members of the Classes are not sufficiently large
8 to warrant vigorous individual prosecution considering all of the concomitant
9 costs and expenses attendant thereto;

10 i. Courts seeking to preserve efficiency and other benefits of class actions
11 routinely fashion methods to manage any individual questions; and

12 j. The Supreme Court of California urges trial courts, which have an obligation
13 to consider the use of innovative procedural tools to certify a manageable
14 class, to be procedurally innovative in managing class actions.

15 30. Well-defined Community of Interest: Plaintiffs also meet the established
16 standards for class certification, as follows:

17 a. Typicality: The claims of Plaintiff Michelle K. Carrillo are typical of the
18 claims of all members of the Classes she seeks to represent because all
19 members of the Classes sustained injuries and damages arising out of
20 Defendants' common course of conduct in violation of law and the injuries
21 and damages of all members of the Classes were caused by Defendants'
22 wrongful conduct in violation of law, as alleged herein.

23 b. Adequacy: Plaintiff Michelle K. Carrillo:

- 24 i) she is an adequate representative of the Classes she seeks to represent;
25 ii) will fairly protect the interests of the members of the Classes;
26 iii) she has no interests antagonistic to the members of the Classes; and
27 iv) will vigorously pursue this suit via attorneys who are competent, skilled
28 and experienced in litigating matters of this type.

- 1 c. Predominant Common Questions of Law or Fact: There are common
2 questions of law and/or fact as to the members of the Classes which
3 predominate over questions affecting only individual members of the Classes,
4 including, without limitation:
- 5 i) Whether Defendants paid the legal and appropriate straight time pay,
6 minimum wage pay and/or overtime pay for all work hours to the
7 members of the Wage Class;
 - 8 ii) Whether Defendants paid all overtime wages owed to the members of
9 the Overtime Rate Class at the appropriate overtime pay rate;
 - 10 iii) Whether Defendants paid the legal and appropriate pay rate for meal
11 and/or rest period penalty premium wages to the members of the
12 Premium Rate Class;
 - 13 iv) Whether Defendants failed to fully reimburse for all work-related
14 expenses incurred by the members of the Reimbursements Class;
 - 15 v) Whether Defendants failed to timely furnish accurate, itemized and legal
16 wage statements to the members of the Derivative Wage Statement
17 Class;
 - 18 vi) Whether Defendants failed to timely furnish accurate, itemized and legal
19 wage statements to the members of the Independent Wage Statement
20 Class;
 - 21 vii) Whether Defendants are liable under Labor Code § 203 to the members
22 of the Derivative LC 203 Class;
 - 23 viii) Whether Defendants are liable under Labor Code § 203 to the members
24 of the Independent LC 203 Class;
 - 25 ix) Whether Defendants' conduct constitutes unfair competition within the
26 meaning of Business & Professions Code §§ 17200, et seq.;
 - 27 x) Whether the members of the Classes are entitled to compensatory
28 damages, and if so, the means of measuring such damages;

- xi) Whether the members of the Classes are entitled to injunctive relief;
xii) Whether the members of the Classes are entitled to restitution; and
xiii) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(On Behalf of the Wage Class)

(Against All Defendants)

32. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

33. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

34. Labor Code § 510(a) states in pertinent part, "Any work in excess of eight hours in one workday and any work in excess of 40 hours 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 any employee."

35. Labor Code § 1182.12 provides the statewide minimum wage in California.

36. Labor Code § 1194(a) states, "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

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1 37. Further, under Labor Code § 1197, payment of less than the minimum wage fixed
2 by the Labor Commission is unlawful.

3 38. Under Labor Code § 1198, it is unlawful to employ persons for longer than the
4 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
5 Wage Order(s).

6 39. Under the IWC Wage Order(s), Defendants are required to pay the members of
7 the Wage Class for all hours worked, meaning the time during which an employee is subject to
8 the control of an employer, including all the time the employee is suffered or permitted to work,
9 whether or not required to do so.

10 40. Defendants, as a matter of established company policy and procedure, at each and
11 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 12 a. Administered a uniform company policy and practice as to the pay policies
13 regarding the members of the Wage Class;
14 b. Required the members of the Wage Class to spend time under Defendants'
15 control for work-related tasks without compensation, including but not limited
16 to undergo COVID screenings while off the clock and requiring employees to
17 wait in a long line before clocking in; and, as such,
18 c. Defendants suffered, permitted, and/or required the members of the Wage
19 Class to work without paying for all time they were under Defendants'
20 control.

21 41. Because Defendants required the members of the Wage Class to remain under
22 Defendants' control without paying therefor, this resulted in the members of the Wage Class
23 earning less than the legal minimum wage in the State of California.

24 42. Defendants' pattern, practice and uniform administration of corporate policy
25 regarding illegal employee compensation as described herein is unlawful and creates an
26 entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Wage
27 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
28 appropriate rate.

1 43. Further, Defendants' pattern and practice in uniform administration of corporate
2 policy regarding Defendants' failure to pay the legal minimum wage to the members of the
3 Wage Class as described herein is unlawful and creates entitlement, under Labor Code § 1194(a),
4 to recovery by the members of the Wage Class, in a civil action, for the unpaid balance of the
5 full amount of the unpaid minimum wages owed, calculated as the difference between the
6 straight time compensation paid and the applicable minimum wage, including interest thereon.

7 44. Under Labor Code § 1194.2(a) (which provides that in any action under Labor
8 Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the
9 Wage Class seek recovery of liquidated damages in an amount equal to the wages unlawfully
10 unpaid and interest thereon.

11 45. That calculation of individual damages for the members of the Wage Class may at
12 some point be required does not foreclose the possibility of taking common evidence on
13 questions regarding their entitlement to overtime compensation.

14 46. Under Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287, the members of
15 the Wage Class seek recovery of pre-judgment interest on all amounts recovered herein.

16 47. Under Labor Code §§ 218.5 and/or 1194, the members of the Wage Class request
17 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME**

20 **WAGES AT THE LEGAL OVERTIME PAY RATE**

21 **(On Behalf of the Overtime Rate Class)**

22 **(Against All Defendants)**

23 48. Plaintiffs incorporate by reference and reallege each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 49. Labor Code § 204 establishes the fundamental right of all employees in the State
27 of California to be paid wages, including straight time and overtime, in a timely fashion for their
28 work.

1 50. Labor Code § 510(a) states in pertinent part, “Any work in excess of eight hours
2 in one workday and any work in excess of 40 hours in any one workweek ... shall be
3 compensated at the rate of no less than one and one-half times the regular rate of pay for any
4 employee.”

5 51. The “regular rate of pay” includes “all [applicable] remuneration paid to, or on
6 behalf of the employee.” (29 U.S.C. § 207(3).) The California Industrial Welfare Commission
7 applies this standard for determining an employee’s regular rate of pay for overtime calculation
8 purposes.

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

14 53. Defendants, as a matter of established company policy and procedure, at each and
15 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 16 a. Administered a uniform company policy and practice regarding the payment
17 of wages, including overtime and bonuses, to the members of the Overtime
18 Rate Class;
- 19 b. Suffered and/or permitted Plaintiff and the members of the Overtime Rate
20 Class to work in excess of eight hours per workday and/or in excess of 40
21 hours per workweek;
- 22 c. Paid the members of the Overtime Rate Class various additional forms of non-
23 discretionary remuneration, including but not limited to bonuses, commission,
24 and/or incentive pay; and yet,
- 25 d. Failed to pay Plaintiff and the members of the Overtime Rate Class at the
26 legal rate reflecting all applicable forms of remuneration for overtime hours
27 worked as required by law.

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1 54. Defendants' pattern, practice and uniform administration of corporate policy
2 regarding illegal employee compensation as described herein is unlawful and creates an
3 entitlement, under Labor Code §§ 218 and 1194(a), to recovery by the members of the Overtime
4 Rate Class, in a civil action, for the unpaid balance of the full amount of the overtime premiums
5 owing.

6 55. That calculation of individual damages for the members of the Overtime Rate
7 Class may at some point be required does not foreclose the possibility of taking common
8 evidence on questions regarding their entitlement to overtime compensation.

9 56. Under Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287, the members of
10 the Overtime Rate Class seek recovery of pre-judgment interest on all amounts recovered herein.

11 57. Under Labor Code §§ 218.5 and/or 1194, the members of the Overtime Rate
12 Class request that the Court award reasonable attorneys' fees and costs incurred by them in this
13 action.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY PREMIUM WAGES AT THE LEGAL PAY RATE**

16 **(On Behalf of the Premium Rate Class)**

17 **(Against All Defendants)**

18 58. Plaintiffs incorporate by reference and reallege each and every one of the
19 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
20 forth herein.

21 59. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or
22 amend working condition orders with respect to break periods, meal periods, and days of rest for
23 any workers in California consistent with the health and welfare of those workers."

24 60. Section 11(C) of the IWC Wage Orders provides that "Unless the employee is
25 relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on
26 duty" meal period and counted as time worked. An "on duty" meal period shall be permitted
27 only when the nature of the work prevents an employee from being relieved of all duty and when
28 by written agreement between the parties an on-the-job paid meal period is agreed to. The

1 written agreement shall state that the employee may, in writing, revoke the agreement at any
2 time.”

3 61. Section 11(D) of the IWC Wage Order(s) provides that “If an employer fails to
4 provide an employee a meal period in accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the meal period is not provided.”

7 62. Section 12(A) of the IWC Wage Order(s) states, “Every employer shall authorize
8 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
9 of each work period. The authorized rest period time shall be based on the total hours worked
10 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
11 However, a rest period need not be authorized for employees whose total daily work time is less
12 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
13 worked for which there shall be no deduction from wages.”

14 63. Section 12(B) of the IWC Wage Order(s) states, “If an employer fails to provide
15 an employee a rest period in accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
17 compensation for each workday that the rest period is not provided.”

18 64. The “regular rate of pay” includes “all [applicable] remuneration paid to, or on
19 behalf of the employee.” (29 U.S.C. § 207(3).) The California Industrial Welfare Commission
20 applies this standard for determining an employee’s regular rate of pay for overtime calculation
21 purposes.

22 65. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, states in pertinent
23 part, “Under California law, employers must provide employees with overtime pay when
24 employees work more than a certain amount of time. ... To calculate overtime pay, [Labor Code]
25 section 510(a) requires an employer to compensate an employee by a multiple of the employee’s
26 ‘regular rate of pay.’ ... If an employer does not provide an employee with a compliant meal,
27 rest, or recovery period, section 226.7, subdivision (c) (section 226.7(c)) requires the employer to
28 ‘pay the employee one additional hour of pay at the employee's regular rate of compensation.’

1 The question here is whether the Legislature intended ‘regular rate of compensation’ under
2 section 226.7(c) to have the same meaning as ‘regular rate of pay’ under section 510(a), such that
3 the calculation of premium pay for a noncompliant meal, rest, or recovery period, like the
4 calculation of overtime pay, must account for not only hourly wages but also other
5 nondiscretionary payments for work performed by the employee. We hold that the terms are
6 synonymous: ‘regular rate of compensation’ under section 226.7(c), like ‘regular rate of pay’
7 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”

8 66. As a matter of Defendants’ established company policy, Defendants failed to
9 always comply with the meal and/or rest period premium penalty payment requirements
10 established by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, Labor Code §§
11 226.7, 512, and 516, and Section 11 and/or 12 of the IWC Wage Order(s).

12 67. Under Section 11(D) and/or Section 12 of the IWC Wage Order(s) and Labor
13 Code § 226.7(b)/(c), which states “if an employer fails to provide an employee a meal or rest
14 period in accordance with an applicable order of the Industrial Welfare Commission, the
15 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
16 compensation for each work day that the meal or rest period is not provided,” the members of the
17 Premium Rate Class were entitled to damages in an amount equal to one additional hour of pay
18 at each employee’s regular rate of compensation for each work day that a meal and/or rest period
19 was not provided, in a sum to be proven at trial.

20 68. However, Defendants, as a matter of established company policy and procedure,
21 at each and every one of the individual facilities owned and/or operated by Defendants,
22 consistently:

- 23 a. Administered a uniform company policy and practice regarding the payment
24 of wages, including premium pay, to the members of the Premium Rate Class;
- 25 b. Paid the members of the Premium Rate Class meal and/or rest period premium
26 wages not at the regular rate of pay, but at a base rate of pay or otherwise,
27 and/or not including “all [applicable] remuneration paid to, or on behalf of the
28 employee”; and

1 c. As such, failed to pay the members of the Premium Rate Class all
2 compensation owed, as required by law.

3 69. Defendants' pattern, practice and uniform administration of corporate policy
4 regarding illegal employee compensation as described herein is unlawful and creates an
5 entitlement, under Labor Code §§ 218 and 1194(a), to recovery by the members of the Premium
6 Rate Class, in a civil action, for the unpaid balance of the full amount of the meal and/or rest
7 period premiums owing.

8 70. That calculation of individual damages for the members of the Premium Rate
9 Class may at some point be required does not foreclose the possibility of taking common
10 evidence on questions regarding their entitlement to overtime compensation.

11 71. Under Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287, the members of
12 the Premium Rate Class seek recovery of pre-judgment interest on all amounts recovered herein.
13 Under Labor Code §§ 218.5 and/or 1194, the members of the Premium Rate Class request that
14 the Court award reasonable attorneys' fees and costs incurred by them in this action.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO FULLY REIMBURSE WORK EXPENSES**

17 **(On Behalf of the Reimbursements Class)**

18 **(Against All Defendants)**

19 72. Plaintiffs incorporate by reference and reallege each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

22 73. Under Labor Code § 2802(a), "an employer shall indemnify his or her employee
23 for all necessary expenditures or losses incurred by the employee in direct consequence of the
24 discharge of his or her duties, or of his or her obedience to the directions of the employer."

25 74. Labor Code § 2804 states in pertinent part, "Any contract or agreement, express
26 or implied, made by any employee to waive the benefits of this article or any part thereof is null
27 and void, and this article shall not deprive any employee or his personal representative of any
28 right or remedy to which he is entitled under the laws of this State."

1 75. As a matter of Defendants' established company policy, Defendants required the
2 members of the Reimbursements Class to personally incur necessary expenditures in direct
3 consequence of the discharge of their duties, including but not limited to the use of personal
4 mobile devices for work-related activities.

5 76. Defendants are legally required to reimburse the members of the Reimbursements
6 Class for all necessary expenditures.

7 77. Defendants failed to fully and reasonably reimburse the members of the
8 Reimbursements Class for all necessary expenditures, including but not limited to the
9 aforementioned expenditures.

10 78. As a proximate result of the aforementioned violations of Labor Code § 2802(a),
11 the members of the Reimbursements Class are entitled to recovery from Defendants of the
12 unpaid balance for all necessary expenditures, including but not limited to the aforementioned
13 expenditures.

14 79. As a proximate result of the aforementioned violations of Labor Code § 2802(a),
15 the members of the Reimbursements Class have been damaged in an amount according to proof
16 at the time of trial.

17 80. Under Labor Code § 2802(b), the members of the Reimbursements Class request
18 that the Court award interest at the same rate as judgments in civil actions, accruing from the
19 date on which each member of the Reimbursements Class incurred the necessary expenditure or
20 loss.

21 81. Under Labor Code § 2802(c), the members of the Reimbursements Class request
22 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

23 **FIFTH CAUSE OF ACTION**

24 **DERIVATIVE FAILURE TO TIMELY**

25 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(On Behalf of the Derivative Wage Statement Class)**

27 82. Plaintiffs incorporate by reference and reallege each and every one of the
28 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set

1 forth herein.

2 83. Labor Code § 226(a) states in pertinent part, “Every employer shall, semimonthly
3 or at the time of each payment of wages, furnish each of his or her employees, either as a
4 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
5 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
6 gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and
8 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
9 each the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee....”

11 84. Further, the IWC Wage Orders § 7(A) states in pertinent part, “(A) Every
12 employer shall keep accurate information with respect to each employee including the following:
13 (3) Time records showing when the employee begins and ends each work period. Meal periods,
14 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
15 in the payroll period and applicable rates of pay....”

16 85. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A),
17 California employers are required to maintain accurate records pertaining to the total hours
18 worked for Defendants by the members of the Derivative Wage Statement Class, including but
19 not limited to, beginning and ending of each work period, meal period and split shift interval, the
20 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

21 86. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage
22 Orders § 7(A), Defendants did not and still do not furnish each of the members of the Derivative
23 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
24 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
25 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
26 number of hours worked at each hourly rate by each respective individual.

27 87. As set forth herein in prior causes of action, Defendants failed to pay the members
28 of the Derivative Wage Statement Class all wages due and owing.

1 88. As a derivative result of this failure to pay wages and as a pattern and practice in
2 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants knowingly and
3 intentionally failed to furnish accurate wage statements to the members of the Derivative Wage
4 Statement Class, including, but not limited to, failing to provide the beginning and ending of
5 each work period, meal period interval, total daily hours worked, total hours worked per pay
6 period, and the applicable rates of pay.

7 89. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
8 employee suffers injury if the employer fails to provide accurate and complete information as
9 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
10 promptly and easily ascertain requisite information without reference to other documents or
11 information.

12 90. Here, the members of Derivative Wage Statement Class suffered injury because,
13 due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to
14 provide accurate and complete information as required by one or more items listed in Labor
15 Code § 226(a)(1)-(9).

16 91. In addition, the members of the Derivative Wage Statement Class have suffered
17 injury as a result of Defendants' failure to maintain accurate records for the members of the
18 Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class
19 were not timely provided written accurate itemized statements showing all requisite information,
20 including but not limited to total hours worked by the employee, net wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate, in violation of Labor Code § 226 and the IWC Wage Orders § 7(A),
23 such that the members of the Derivative Wage Statement Class were misled by Defendants as to
24 the correct information regarding various items, including but not limited to total hours worked
25 by the employee, net wages earned and all applicable hourly rates in effect during the pay period
26 and the corresponding number of hours worked at each hourly rate.

27 92. The actual injuries suffered by the members of the Derivative Wage Statement
28 Class as a result of Defendants' knowing and intentional failure to provide accurate records for

1 the members of the Derivative Wage Statement Class include but are not limited to:

- 2 a. Confusion over whether they received all wages owed them by Defendants;
- 3 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 4 c. Being forced to engage in mathematical computations to analyze whether
- 5 Defendants' wages in fact compensated for all hours worked;
- 6 d. The inability to accurately calculate wage rates complicated by the fact that
- 7 wage statement information required by Labor Code § 226 is missing;
- 8 e. That such practice prevents the members of the Derivative Wage Statement
- 9 Class from being able to effectively challenge information on their wage
- 10 statements; and/or
- 11 f. The difficulty and expense of filing and maintaining this lawsuit, and the
- 12 discovery required to collect and analyze the very information that California
- 13 law requires.

14 93. Under Labor Code § 226(e), the members of the Derivative Wage Statement
15 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
16 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
17 exceeding an aggregate penalty of \$4,000.00.

18 94. Under Labor Code § 226(g), the currently-employed members of the Derivative
19 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
20 Labor Code § 226.

21 95. Under Labor Code §§ 226(e)/(g), the members of the Derivative Wage Statement
22 Class are also entitled to an award of costs and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION
INDEPENDENT FAILURE TO TIMELY
FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(On Behalf of the Independent Wage Statement Class)
(Against All Defendants)

96. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

97. Labor Code § 226(a) states in pertinent part, “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period...”

98. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not and still do not furnish each of the members of the Independent Wage Statement Class with an accurate itemized statement in writing showing the total hours worked by the employee.

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1 99. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
2 employee suffers injury if the employer fails to provide accurate and complete information as
3 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
4 promptly and easily ascertain required information without reference to other documents or
5 information.

6 100. Here, the members of Independent Wage Statement Class suffered injury because
7 Defendants failed to provide accurate and complete information as required by one or more items
8 listed in Labor Code § 226(a)(1)-(9) and the Independent Wage Statement Class members could
9 not and cannot promptly and easily ascertain required information without reference to other
10 documents or information.

11 101. In addition, the members of the Independent Wage Statement Class have suffered
12 injury as a result of Defendants' failure to provide accurate records for the members of the
13 Independent Wage Statement Class in that the members of the Independent Wage Statement
14 Class were not timely provided written accurate itemized statements showing all required
15 information, including but not limited to the total hours worked by the employee, in violation of
16 Labor Code § 226, such that the members of the Independent Wage Statement Class were misled
17 by Defendants as to the correct information regarding various items, including but not limited to
18 the total hours worked by the employee.

19 102. The actual injuries suffered by the members of the Independent Wage Statement
20 Class as a result of Defendants' knowing and intentional failure to provide accurate records for
21 the members of the Independent Wage Statement Class include but are not limited to:

22 a. That such practice prevents the members of the Independent Wage Statement
23 Class from being able to effectively challenge information on their wage
24 statements; and/or

25 b. The difficulty and expense of filing and maintaining this lawsuit and the
26 discovery required to collect and analyze the very information that California
27 law requires.

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1 103. Under Labor Code § 226(e), the members of the Independent Wage Statement
2 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
3 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of \$4,000.00.

5 104. Under Labor Code § 226(g), the currently-employed members of the Independent
6 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
7 Labor Code § 226.

8 105. Under Labor Code §§ 226(e)/(g), the members of the Independent Wage
9 Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

10 **SEVENTH CAUSE OF ACTION**

11 **DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202**

12 **(On Behalf of the Derivative LC 203 Class)**

13 **(Against All Defendants)**

14 106. Plaintiffs incorporate by reference and reallege each and every one of the
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
16 forth herein.

17 107. Labor Code § 203 provides that if an employer willfully fails to pay, without
18 abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
19 employee who is discharged or who quits, the wages of the employee shall continue at the same
20 rate, for up to 30 days from the due date thereof, until paid or until an action therefor is
21 commenced.

22 108. The members of the Derivative LC 203 Class are no longer employed by
23 Defendants as they were either discharged from or quit Defendants' employ.

24 109. Defendants had a consistent and uniform policy, practice, and procedure of
25 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
26 according to amendment or proof.

27 110. As set forth above, Defendants willfully failed to pay the members of the
28 Derivative LC 203 Class their entire wages due and owing at the time of their termination or

1 within seventy-two hours of their resignation and failed to pay those sums for up to 30 days
2 thereafter.

3 111. Defendants' willful failure to pay wages to the members of the Derivative LC 203
4 Class violates Labor Code § 203 because Defendants knew or should have known wages were
5 due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to
6 pay them.

7 112. Thus, the members of the Derivative LC 203 Class are entitled to recovery under
8 Labor Code § 203.

9 **EIGHTH CAUSE OF ACTION**

10 **INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202**

11 **(On Behalf of the Independent LC 203 Class)**

12 **(Against All Defendants)**

13 113. Plaintiffs incorporate by reference and reallege each and every one of the
14 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
15 forth herein.

16 114. Labor Code § 201(a) states in pertinent part, "If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately."

19 115. Labor Code § 202(a) states in pertinent part, "If an employee not having a written
20 contract for a definite period quits his or her employment, his or her wages shall become due and
21 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
22 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at
23 the time of quitting. Notwithstanding any other provision of law, an employee who quits without
24 providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests
25 and designates a mailing address. The date of the mailing shall constitute the date of payment for
26 purposes of the requirement to provide payment within 72 hours of the notice of quitting."

27 116. Labor Code § 203 provides that if an employer willfully fails to timely pay,
28 without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an

1 employee who is discharged or who quits, the wages of the employee shall continue at the same
2 rate, for up to 30 days from the due date thereof, until paid or until an action therefore is
3 commenced.

4 117. The members of the Independent LC 203 Class are no longer employed by
5 Defendants as they were either discharged from or quit Defendants' employ.

6 118. Defendants had a consistent and uniform policy, practice and procedure of
7 willfully failing to timely pay the earned wages of Defendants' former employees, according to
8 amendment or proof.

9 119. For example, on or about June 18, 2024, Defendants terminated the employment
10 of Plaintiff Michelle K. Carrillo. However, Defendants did not provide final wages to Plaintiff
11 Michelle K. Carrillo until June 21, 2024, i.e., three days after her employment termination, and
12 this check did not include waiting time penalties.

13 120. As such, Defendants willfully failed to pay the members of the Independent LC
14 203 Class all wages due and owing at the time of their termination or within seventy-two hours
15 of their resignation.

16 121. Defendants' willful failure to timely pay final wages to the members of the
17 Independent LC 203 Class violates Labor Code §§ 201-202 because Defendants knew or should
18 have known final wages were due to the members of the Independent LC 203 Class by a date
19 certain, but Defendants failed to pay them on a timely basis on or before that deadline.

20 122. Thus, the members of the Independent LC 203 Class are entitled to recovery
21 under to Labor Code § 203.

22 **NINTH CAUSE OF ACTION**

23 **PENALTIES UNDER LABOR CODE § 2699**

24 **(On Behalf of the Aggrieved Employees)**

25 **(Against All Defendants)**

26 123. Plaintiffs incorporate by reference and reallege each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
28 forth herein.

124. In addition to seeking civil penalties for the substantive Labor Code violations as alleged above, Plaintiffs allege as follows:

A. FAILURE TO PAY SICK PAY AT THE LEGAL PAY RATE

125. Labor Code § 246(a) states: “(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

126. Labor Code § 246(b)(1) states: “An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.”

127. Labor Code § 246(l) states: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

128. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, during the relevant time period:

a. Administered a uniform company policy and practice as to the pay policies regarding Plaintiff and all other similarly situated aggrieved employees; and

b. Failed to pay Plaintiff and all other similarly situated aggrieved employees for paid sick days in a manner that fully complies with Labor Code § 246(l).

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1 129. Defendants' pattern, practice, and uniform administration of corporate policy
2 regarding illegal employee compensation as described herein is unlawful and creates an
3 entitlement, under Labor Code §§ 246, 248.5, and/or 2699, et seq., to recovery by Plaintiff and
4 all other similarly situated aggrieved employees, in a civil action, to the extent allowed by law.

5 **B. PENALTIES ASSESSED**

6 130. Under Labor Code § 2699(a) (which provides that any provision of the Labor
7 Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its
8 departments, divisions, commissions, board agencies or employees, such civil penalties may, as
9 an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
10 of himself or herself and other current or former employees) and Labor Code § 2699(f) (which
11 establishes a civil penalty for violations of all Labor Code provisions except those for which a
12 civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable
13 civil penalties, as follows:

- 14 a. As applicable, for civil penalties under Labor Code § 2699(f), for all
15 violations of the Labor Code except for those for which a civil penalty is
16 specifically provided, in the amount of \$100 for each aggrieved employee per
17 pay period as set forth in Labor Code § 2699(f)(2)(A) and \$200 for each
18 aggrieved employee per pay period as set forth in Labor Code §
19 2699(f)(2)(B);
- 20 b. As applicable, civil penalties under Labor Code § 558 (in addition to and
21 entirely independent and apart from any other penalty provided in the Labor
22 Code), for violations of Labor Code §§ 500-556, in the amount of \$50 for
23 each underpaid aggrieved employee for each pay period the aggrieved
24 employee was underpaid, and \$100 for each subsequent violation for each
25 underpaid employee for each pay period for which the employee was
26 underpaid;
- 27 c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to
28 and entirely independent and apart from any other penalty provided in the

Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid, and \$250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed;

d. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§ 204 and 204b in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

e. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

f. As applicable, for civil penalties under Labor Code § 248.5(e) (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 246(l);

g. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes

131. In addition, Plaintiff seeks and is entitled to 65% of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 35% to Plaintiff and all other similarly situated aggrieved employees.

132. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under Labor Code §§ 2699(k)(1) and any other applicable statute.

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1 133. Labor Code § 2699.3(a) states in pertinent part: “A civil action by an aggrieved
2 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
3 listed in Section 2699.5 shall commence only after the following requirements have been met:
4 (1) (A) The aggrieved employee or representative shall give written notice by online filing with
5 the Labor and Workforce Development Agency and by certified mail to the employer of the
6 specific provisions of this code alleged to have been violated, including the facts and theories to
7 support the alleged violation.”

8 134. Labor Code § 2699.3(c)(1) states in pertinent part: “A civil action by an aggrieved
9 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
10 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
11 commence only after the following requirements have been met: (1) (A) The aggrieved
12 employee or representative shall give written notice by online filing with the Labor and
13 Workforce Development Agency and by certified mail to the employer of the specific provisions
14 of this code alleged to have been violated, including the facts and theories to support the alleged
15 violation.”

16 135. Here, Plaintiffs’ civil action alleges violations of provisions listed in Labor Code
17 § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such,
18 Labor Code § 2699.3(a) and § 2699.3(c) apply to this action.

19 136. On February 10, 2025, Plaintiffs complied with Labor Code § 2699.3(a) and
20 Labor Code § 2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA
21 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged violations. Attached hereto
23 as Exhibit 1 is Plaintiffs’ LWDA letter.

24 137. Labor Code § 2699.3(a) further states in pertinent part: “(2)(A) The agency shall
25 notify the employer and the aggrieved employee or representative by certified mail that it does
26 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
27 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
28 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the

aggrieved employee may commence a civil action pursuant to Section 2699.”

138. As of April 16, 2025 (65 calendar days after Plaintiffs’ February 10, 2025 LWDA letter was filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code § 2699.3(a) and are authorized to commence a civil action that includes a cause of action under Labor Code § 2699.

139. Further, as of March 15, 2025 (33 calendar days after Plaintiffs’ February 10, 2025 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code § 2699.3(c) and are authorized to commence a civil action that includes a cause of action under Labor Code § 2699.

TENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(On Behalf of the 17200 Class)
(Against All Defendants)

140. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

141. Business & Professions Code § 17200 provides, in pertinent part, “unfair competition shall mean and include any unlawful, unfair or fraudulent business act.”

142. Business & Professions Code § 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

143. Business & Professions Code § 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

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144. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by Business & Professions Code § 17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

145. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

146. Defendants' use of such practices constitutes an unfair business practice and unfair competition and provides an unfair advantage over Defendants' competitors.

147. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

148. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair practices complained of herein.

149. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs.

150. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

151. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law

firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages:

- b. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;
- c. For liquidated damages as authorized by Labor Code § 1194.2(a);
- d. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;
- e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;
- f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Second Cause of Action for Failure to Pay All Overtime Wages at the Legal Overtime

Pay Rate:

- g. For damages, as set forth in Labor Code § 1194(a) and the IWC Wage Order(s) regarding wages due and owing, according to proof;
- h. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a), and Civil Code § 3287;
- i. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Third Cause of Action for Failure to Pay Premium Wages At the Legal Pay Rate:

- j. For damages, as set forth in Labor Code § 1194(a) and the IWC Wage Order(s) regarding wages due and owing, according to proof;
- k. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;
- l. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

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1 As to the Fourth Cause of Action for Unpaid Reimbursements for Work Expenses:

2 m. For recovery of the unpaid balance for all necessary expenditures and losses incurred
3 in direct consequence of the discharge of Defendants' duties;

4 n. For interest thereon at the same rate as judgments in civil actions, accruing from the
5 date on which each member of the Reimbursements Class incurred the necessary
6 expenditure or loss, under Labor Code § 2802(b);

7 o. For reasonable attorneys' fees and costs under Labor Code § 2802(c);

8 As to the Fifth Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized

9 Wage Statements:

10 p. For recovery as authorized by Labor Code § 226(e);

11 q. For an award of costs and reasonable attorneys' fees under Labor Code §§ 226(e)/(g);

12 As to the Sixth Cause of Action for Independent Failure to Timely Furnish Accurate Itemized

13 Wage Statements:

14 r. For recovery as authorized by Labor Code § 226(e);

15 s. For an award of costs and reasonable attorneys' fees under Labor Code §§ 226(e)/(g);

16 As to the Seventh Cause of Action for Derivative Violations of Labor Code §§ 201-202:

17 t. For recovery as authorized by Labor Code § 203;

18 As to the Eighth Cause of Action for Independent Violations of Labor Code §§ 201-202:

19 u. For recovery as authorized by Labor Code § 203;

20 As to the Ninth Cause of Action for Penalties Under Labor Code § 2699:

21 v. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and
22 entirely independent and apart from other penalties in the Labor Code and for Labor
23 Code violations without a specific civil penalty, in the amount of \$100 for each
24 aggrieved employee per pay period for each violation and/or \$200 for each aggrieved
25 employee per pay period for each violation that arises from any policy or practice
26 that, within the five years preceding the alleged violation, the LWDA or any court has
27 determined was unlawful, and/or each malicious, fraudulent, or oppressive violation;

28 ///

- 1 w. As applicable, for civil penalties under Labor Code § 558, in addition to and entirely
2 independent and apart from other penalties in the Labor Code, as follows:
- 3 i) For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
4 employee for each pay period for which the employee was underpaid; and
- 5 ii) For each subsequent violation, one hundred dollars (\$100) for each aggrieved
6 underpaid employee for each pay period for which the employee was underpaid;
- 7 x. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and
8 entirely independent and apart from other penalties in the Labor Code, as follows:
- 9 i) For any initial violation that is intentionally committed, \$100 for each aggrieved
10 underpaid employee for each pay period for which the employee was underpaid;
11 and
- 12 ii) For each subsequent violation, regardless of whether the initial violation is
13 intentionally committed, \$250 for each aggrieved underpaid employee for each
14 pay period for which the employee was underpaid;
- 15 y. As applicable, for civil penalties under Labor Code § 210, in addition to and entirely
16 independent and apart from other penalties in the Labor Code, in the amount of \$100
17 for each aggrieved employee per pay period for each violation, and \$200 for each
18 aggrieved employee per pay period for each subsequent violation;
- 19 z. As applicable, for civil penalties under Labor Code § 226.3, in addition to and
20 entirely independent and apart from other penalties in the Labor Code, in the amount
21 of \$250 for each aggrieved employee per pay period for each violation, and \$1,000
22 for each aggrieved employee per pay period for each subsequent violation;
- 23 aa. As applicable, for civil penalties under Labor Code § 248.5(e) (in addition to and
24 entirely independent and apart from any other penalty provided in the Labor Code),
25 for each violation of Labor Code § 246(l), in the amount of \$250;
- 26 bb. For an award of reasonable attorneys' fees and costs incurred under Labor Code §
27 2699(g)(1); and
- 28 cc. For such relief as this Court may deem just and proper;

As to the Tenth Cause of Action for Unfair Business Practices:

dd. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

ee. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, home telephone number and, if available, email address;

ff. For an Order requiring Defendants to make full restitution and payment under California law;

gg. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

hh. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive her money;

ii. For all other appropriate injunctive, declaratory and equitable relief;

jj. For interest to the extent permitted by law;

kk. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action under Code of Civil Procedure § 1021.5, Business & Professions Code §§ 17200, et seq., Labor Code § 1194 and/or any other applicable provision of law;

As to All Causes of Action:

ll. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

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VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: April 17, 2025

D.LAW, INC.

By: G. E. Toscano

Emil Davtyan, Esq.

Gregg Lander, Esq.

Vanessa M. Ruggles, Esq.

Guido E. Toscano, Esq.

Attorneys for Plaintiffs

EXHIBIT 1

February 10, 2025

Submitted at <https://www.dir.ca.gov> with \$75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAFilings@dir.ca.gov

Re: Advanced Bionics, LLC (the “Employer”)

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: Michelle K. Carrillo (the “Employee”), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period the Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employee and other aggrieved employees spent time under the Employer’s control but were not paid therefor. For example, the Employer required the Employee and other aggrieved employees to undergo COVID screenings while off the clock and requiring employees to wait in a long line before clocking in. In these circumstances, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer’s control. As such, the Employer violated Labor Code §§ 510, 1194, 1197, and/or 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses, commission, and/or incentive pay. However, the Employer did not include all forms of remuneration in the overtime pay rate when the Employee and other aggrieved employees worked overtime. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Third, the Employer sometimes paid the Employee and other aggrieved employees premium pay for meal and/or rest period violations. However, the Employer failed to always comply with the meal and/or rest period penalty payment requirements established by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, Labor Code §§ 226.7, 512, 516, and Section 11 and/or 12 of the IWC Wage Order(s). Specifically, the Employer failed to always include all forms of remuneration in the calculation of the regular rate of pay. As such, the Employer owes the Employee and other aggrieved employees unpaid wages, in violation of Labor Code §§ 1194 and 226.7(c) and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.



Fourth, the Employee and other aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to the use of their personal cell phones. The Employer failed to reimburse for these work-related expenses. As such, the Employer violated Labor Code § 2802 by failing to reimburse the Employee and other aggrieved employees for all business expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Fifth, regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because of the Employer failed to pay all wages as set forth above, Employer issued wage statements that inaccurately reflected hours worked and/or wages earned by the Employee and other aggrieved employees, and the Employer has derivatively violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Sixth, also regarding wage statements, and in addition to the derivative violations of Labor Code § 226 above, under Labor Code § 226(a) and the applicable Industrial Wage Order, the Employer is required to include certain information on an employee's wage statement. Here, the Employer issued improper wage statements to the Employee and other aggrieved employees because the Employer's wage statements did not always contain all requisite information, including but not limited to the total hours worked by the employee. As such, the Employer independently violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Seventh, regarding waiting time penalties, because the Employer failed to pay all wages as set forth above, formerly-employed aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. The Employer's failure to timely pay final wages to formerly-employed aggrieved employees was willful in that the Employer adopted policies and/or practices that were incompatible with the Labor Code. Because the Employer failed to pay all wages as set forth above, the Employer derivatively violated Labor Code §§ 201-202 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Eighth, also regarding waiting time penalties, in addition to the derivative violations of Labor Code § 203 set forth above, the Employer did not timely pay the Employee and other separated aggrieved employees all wages due and owing in a timely manner. For example, the Employer terminated the Employee on June 18, 2024, so her final wages were immediately due and owing. However, the Employer willfully failed to pay the Employee her final wages until June 21, 2024. Therefore, the Employer violated Labor Code §§ 201-203 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Ninth, and finally, the Employer failed to always provide the Employee and other aggrieved employees with paid sick days paid at the regular rate of pay. The Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses, commissions, and/or incentive pay. However, the Employer did not include all forms of remuneration in the sick pay rate in violation of Labor Code § 246(l) and owes penalties under Labor Code §§ 2699(a)/(f), 248.5, and/or 558.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.



PAGA Administrator
Re: Advanced Bionics, LLC
February 10, 2025
Page 3

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles
Guido E. Toscano

cc: (via Certified Mail)
Advanced Bionics, LLC
28515 Westinghouse Place
Valencia, CA 91355

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I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

**FIRST AMENDED COMPLAINT (AMENDED AS A MATTER OF RIGHT
UNDER LABOR CODE § 2699.3(a)(2)(C))**

Attorney for Defendant Advanced Bionics, LLC:

using the following service method:

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

ornia.

Cindy Rivas