

1 DAVID YEREMIAN & ASSOCIATES, INC.  
David Yeremian (SBN 226337)  
2 david@yeremianlaw.com  
Alvin B. Lindsay (SBN 220236)  
3 alvin@yeremianlaw.com  
2540 Foothill Blvd., Suite 201  
4 La Crescenta, California 91214  
Telephone: (818) 230-8380  
5 Facsimile: (818) 230-0308

6 Attorneys for Plaintiff Ricardo Antonio Perez Flores,  
on behalf of himself and others similarly situated  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

11 RICARDO ANTONIO PEREZ FLORES, an  
individual, on behalf of himself and others  
12 similarly situated,

13 Plaintiff,

14 vs.

15 L.A. HARDWOOD FLOORING, INC., a  
California corporation; and DOES 1 through  
16 50, inclusive,

17 Defendants.  
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**FILED**  
Superior Court of California  
County of Los Angeles  
10/25/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

Case No.: 22STCV26518

**CLASS ACTION**

**Assigned for All Purposes To:**

Hon. David S. Cunningham III

Dept.: 11 – Spring Street Courthouse

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

**DEMAND FOR JURY TRIAL**

Complaint Filed: August 16, 2022

Trial Date: None set

1 Plaintiff RICARDO ANTONIO PEREZ FLORES (hereinafter “Plaintiff”), on behalf of  
2 himself and other similarly situated non-exempt, hourly employees employed by Defendants in  
3 California (collectively, “Employees”; individually, “Employee”), complains of Defendants, and  
4 each of them, as follows:

### 5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former  
7 Employees of Defendants L.A. HARDWOOD FLOORING, INC., a California corporation, and  
8 DOES 1 through 50, inclusive (all defendants being collectively referred to herein as  
9 “Defendants”), within the State of California who, at any time from four (4) years prior to the  
10 filing of this lawsuit, are or were employed as non-exempt, hourly employees including as  
11 delivery drivers and in positions relating to warehousing operations and shipping and receiving  
12 and delivering flooring products to Defendants’ customers. Plaintiff alleges that Defendants, and  
13 each of them, violated various provisions of the California Labor Code, relevant orders of the  
14 Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

15 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for  
16 Defendants in California, including in various positions related to warehousing, selling, and  
17 distributing Defendants’ product inventory, including as delivery drivers. Defendants employed  
18 Plaintiff and the Class members based out of their facilities in California and including in Los  
19 Angeles County. Plaintiff and the other similarly situated Class members worked at Defendants’  
20 behest without being paid all wages due and without being provided all required breaks. More  
21 specifically, Plaintiff and the other similarly situated Class members were employed by  
22 Defendants and shared similar job duties and responsibilities, were subjected to the same policies  
23 and practices, and endured similar violations at the hands of Defendants as the other Employee  
24 Class members who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock  
26 and failed to record accurate time worked by these Employees, failed to pay them at the  
27 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or  
28 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that

1 prevented them from learning of these unlawful pay practices. Defendants also failed to provide  
2 Plaintiff and the Class with lawful meal and rest periods, as Defendants failed to schedule breaks  
3 and Employees were required to remain under Defendants' control and were not provided with the  
4 opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by  
5 the Labor Code and the applicable paragraphs of the IWC Wage Orders.

6 4. L.A. HARDWOOD FLOORING, INC. is a California corporation which lists its  
7 principal place of business in Pacoima in Los Angeles County. The documents resembling a wage  
8 statement which Defendants provided to Plaintiff listed "LA Hardwood Flooring Inc." as the  
9 employer. Upon information and belief, L.A. HARDWOOD FLOORING, INC. also does business  
10 as Eternity Flooring and Eternity Floors and Eternity Flooring Solutions. The website for Eternity  
11 Flooring explains: "Since 2007, Eternity Floors has been a leader in manufacturing and  
12 distributing Quality Resilient Floors..." Defendant maintains sales offices, warehouse, shipping  
13 and receiving and yard facilities in Los Angeles County.

14 5. This Court has jurisdiction over this Action pursuant to California Code of Civil  
15 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
16 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
17 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
18 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
19 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Mateo County  
20 where Defendants maintain offices and headquarters.

21 6. The true names and capacities, whether individual, corporate, associate, or  
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of  
24 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants  
25 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in  
26 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend  
27 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
28 Does 1 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class members to work, or engaged them, thereby creating a common law employment relationship with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

## FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends, *inter alia*, that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock work, failed to provide meal and rest breaks, failed to reimburse necessary business expenses, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

9. During the course of Plaintiff and the Class members' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ Plaintiff and other non-exempt, hourly

1 employees in similar and related positions based out of Defendants' facilities in California.

2 10. Plaintiff was generally scheduled to work five days a week and eight hours per  
3 shift, though his shifts were often longer for nine or ten hours depending on the day's deliveries.  
4 Defendants incorporated digital clocks in conjunction with cameras in the vehicles which also  
5 worked with a cellular phone application entitled SAMSERA with an EZ Clocking program to  
6 record timekeeping related records. The system was supposed to track times when shifts started  
7 and ended and durations for tasks and the like, but the entries it maintained were unreliable and  
8 not generally a reflection of actual hours worked. For example, a manager would enter a  
9 timekeeping punch when the manager saw an employee coming in for the day and would use the  
10 time when the vehicle stopped or the scheduled end time as the end of the work shift time punch.  
11 The system would record starts and stops of the vehicle during the various deliveries, but these  
12 also were inaccurate indications of when Plaintiff was driving or on a break. This led to  
13 inherently unreliable and inaccurate timekeeping records. Additionally, while Plaintiff and his co-  
14 workers were permitted to see the hours that were entered into Defendants' timekeeping records,  
15 they were not permitted to make any changes to render them accurate. As further addressed  
16 below, Defendants also failed to issue accurate itemized wage statements to Plaintiff and his co-  
17 workers, as statements omitted required information and failed to accurately reflect the hours they  
18 worked during a given pay period or the rates at which they were paid.

19 11. Plaintiff worked for Defendants based out of the Commerce facility and  
20 warehouse, and he would report there at the start of his work shift before heading out to make  
21 deliveries. Upon information and belief, similar operations were based out of similar warehouses  
22 and yards at Defendants' facilities in Pacoima and San Leandro, California. Plaintiff generally  
23 arrived 20 minutes or so early for his shifts, which were scheduled to begin at either 7:00 a.m. or  
24 7:30 a.m.. He would perform pre-shift work tasks as required to be ready for the day. Plaintiff  
25 then would clock in and walk to his supervisor to receive his assigned delivery routes for the day.  
26 There were usually 7-9 deliveries to complete during a shift. Plaintiff would then begin  
27 conducting his pre-trip inspection of his assigned delivery vehicle, including taking pictures, and  
28 he would set out to pick up and deliver flooring and related products to customer locations.

1           12.     When Plaintiff was able to receive assistance unloading from store staff members,  
2 he was glad to receive it, but Plaintiff was otherwise required to unload the flooring items at the  
3 customer locations. When Plaintiff returned to the yard at the end of his shift, he would drop off  
4 his shipping slips and paperwork for the day with the office and then complete his required post-  
5 trip inspections. Defendants also required Plaintiff to clock out to avoid incurring overtime and  
6 time records were later changed or updated to control overtime, and the Application for  
7 timekeeping would often freeze and make it too difficult to log any time entries.

8           13.     Defendants thus followed a uniform policy and practice of requiring employees in  
9 the Class to endure substantial pre shift and post shift off the clock work. Plaintiff was therefore  
10 not paid for all his hours worked at the required minimum, overtime and double time wage rates  
11 due to Defendants' uniformly applied and unlawful policy and practice of requiring him to work  
12 off the clock and without pay. Defendants systematically underpaid Plaintiff and the Class  
13 members by failing to pay them at the required overtime rates for all hours over eight or ten in a  
14 work shift or over forty in a work week, and all hours over twelve in a day at the required double  
15 time rate. Upon information and belief, the Class members were bound by similar scheduling and  
16 timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

17           14.     Defendants have either failed to maintain timekeeping records for Plaintiff that  
18 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants  
19 required and the actual hours Plaintiff worked or the breaks he received or have otherwise  
20 declined to produce them to Plaintiff in response to a timely and lawful records request. By  
21 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the  
22 Class members, and by failing to record meal period start or end times or inaccurately recording  
23 them, Defendants have committed knowing and intentional ongoing violations of the record  
24 keeping requirements under the Labor Code, including section 1174, by either failing to maintain  
25 records or retaining inaccurate ones.

26           15.     The failure to pay for all hours worked and underpayment of wages to Plaintiff  
27 and the Class members is and has been a direct consequence of Defendants' unlawful  
28 compensation policies and practices, which upon information and belief applied uniformly to the

1 Class members working at Defendants' facilities throughout this County and California. As a  
2 result of the above-described unlawful requirements to work off the clock, the failure to  
3 accurately record all hours worked and pay wages at the correct rates, and the other wage  
4 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly  
5 paid all wages earned and all wages owed to them by Defendants, including when working more  
6 than eight hours in any given day and/or more than forty hours in any given week.

7 16. Therefore, from at least four years prior to the filing of this lawsuit and continuing  
8 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all  
9 hours worked and failing to pay minimum wages for all time worked, as required by California  
10 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,  
11 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation  
12 at premium overtime rates for all hours worked in excess of eight or ten hours a day and/or forty  
13 hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in  
14 violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

15 17. Defendants also failed to provide Plaintiff and the Class members with their  
16 required first and second meal periods and three ten-minute rest breaks as required for scheduled  
17 shifts over ten hours in duration. The above described off the clock work also contributed to  
18 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class  
19 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).  
20 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to  
21 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the  
22 IWC Wage Order(s).

23 18. Defendants did not begin recording meal break start and end times until sometime  
24 in 2020, when they began using electronic logs. In both instances, Defendants' managers would  
25 manipulate the records as necessary to reflect timely and otherwise compliant meal periods were  
26 taken without regard to whether they were or not. Under the SAMSERA Application, EZ  
27 Clocking was used for recording lunches, and they were automatically presumed to have been  
28 taken without regard to whether they in fact were. Defendants and their managers exerted intense

1 production demands on Plaintiff and the Class members and pushed them to complete their  
2 deliveries as scheduled. Customers were also demanding and required flooring and materials  
3 delivered in the promised window, and would call the office to complain or else call Plaintiff  
4 directly on his phone for status and estimated arrival times. When Plaintiff complained about this  
5 required usage of his cellular phone, he was told he was given a stipend to answer and respond to  
6 such calls. On the occasions when Plaintiff worked over ten hour shifts, he did not receive a  
7 second meal period. Plaintiff and the other drivers were not allowed to leave their vehicles and  
8 were restricted in where they could take meal breaks, and they were required to respond to phone  
9 calls without regard to whether they were on breaks. By exercising control over Plaintiff and the  
10 Class members during meal periods, and by management pressure to complete deliveries,  
11 Defendants committed ongoing meal period violations.

12 19. To the extent Defendants provided any meal periods and authorized and permitted  
13 any rest breaks, they were never scheduled and generally were not duty-free or were untimely or  
14 were interrupted by work demands. Also, Plaintiff and the Class members were required to remain  
15 under Defendants' control during any breaks they were able to take, as management and  
16 production demands required them to work through breaks

17 20. Defendants thus failed to provide all the legally required unpaid, off-duty meal  
18 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class  
19 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class  
20 members were required to perform work as ordered by Defendants for more than five hours during  
21 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants  
22 followed a practice of requiring off the clock work in a manner that would impact when  
23 Employees were to receive meal periods and rest breaks, thus leading to further violations.

24 21. Upon information and belief, Defendants' systems did not automatically generate a  
25 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours  
26 into a work shift or in the event records reflected a meal period of less than 30 minutes or a  
27 missed meal. However, upon information and belief, in the event Defendants did pay any meal  
28 period premiums, they did so at the employee's customary regular rate of hourly compensation



1 without including all forms of remuneration in that hourly rate calculation, for example by  
2 omitting bonuses or shift differentials and the like from the rate at which meal premiums were  
3 paid.

4 22. As a result, Defendants' failure to provide Plaintiff and the Class members with all  
5 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest  
6 periods is and will be evidenced by Defendants' business records, or lack thereof. As further  
7 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at  
8 each Employee's effective regular hourly rate of compensation for each meal period or rest break  
9 that Defendants failed to provide or deficiently provided.

10 23. Therefore, for at least four years prior to the filing of this action and through to the  
11 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not  
12 provided with the opportunity to take required breaks as required under the Labor Code and Wage  
13 Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Class  
14 members were provided with a meal period, it was often untimely or interrupted, or was  
15 impermissibly shortened, and Employees were not provided with one hour's wages at their regular  
16 rate in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- 17 (a) Class members were not provided full thirty-minute duty free meal periods  
18 for work days in excess of five hours and were not compensated one hour's  
19 wages in lieu thereof, or were not compensated at the correct regular rate  
20 of compensation, all in violation of, among others, Labor Code §§ 226.7,  
21 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 22 (b) Class members were not provided second full thirty-minute duty free meal  
23 periods for work days in excess of ten hours;
- 24 (c) Class members were required to work through at least part of their daily  
25 meal period(s);
- 26 (d) Meal periods were provided after five hours of continuous work during a  
27 shift; and  
28

(e) Class members were restricted in their ability to take a full thirty-minute meal period or to leave Defendants' work sites and premises.

24. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members were either not authorized permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to instructions from management and perform work tasks during breaks. Defendants never scheduled or accounted for first, second, or third rest breaks despite habitually requiring Class members to work shifts requiring multiple rest breaks.

25. It was common not to take ten minute rest breaks during work shifts for similar reasons. Defendants did not schedule rest breaks and barely communicated with Employees regarding rest breaks. Plaintiff was required by production and scheduling demands to complete deliveries timely and rest breaks were accordingly not prioritized. If and when they were taken, they were generally untimely and interrupted by work demands and calls from customers and managers, and Class members were restricted to their vehicles and work areas during breaks.

26. During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Class members were and are under Defendants' control when they are working through rest breaks. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were required to remain under Defendants' control during breaks under Defendants' uniformly applied policies and practices. Rest period violations therefore arose in one or more of the following manners:

(a) Class members were required to work without being provided a minimum ten minute rest period for every four hours or major fraction thereof

1 worked and were not compensated one hour of pay at their regular rate of  
2 compensation for each workday that a rest period was not provided;

3 (b) Class members were not authorized and permitted to take timely rest  
4 periods for every four hours worked, or major fraction thereof; and

5 (c) Class members were required to remain on duty during rest periods or  
6 otherwise had their rest periods interrupted by work demands.

7 27. From at least four years prior to the filing of this lawsuit and continuing to the  
8 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or  
9 deducting the Employees' earned wages, including by the above described off the clock work and  
10 on-duty work while on unpaid meal breaks or paid rest breaks. By not compensating Employees  
11 for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code §  
12 221.

13 28. Defendants also violated California Labor Code § 246 by not providing all  
14 required paid sick days to Plaintiff and the aggrieved employees. Labor Code § 246 provides that  
15 an Employee who "works in California for the same employer for 30 or more days within a year  
16 from the commencement of employment is entitled to paid sick days as specified in this section."  
17 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their  
18 required and earned sick days, in violation of Labor Code § 246. Additionally and upon  
19 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to  
20 the Class members during the relevant time period, including by failing to provide two work  
21 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and  
22 248.2 and including damages and penalties as these sections are enforced through Labor Code §  
23 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid  
24 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),  
25 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars  
26 (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief  
27 available for Defendants' failure to provide Employees with all their required and earned sick  
28 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,

1 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,  
2 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees  
3 and costs pursuant to Labor Code § 2699(g)(1).

4 29. As a result of these illegal policies and practices, Defendants also engaged in and  
5 enforced the following additional unlawful practices and policies against Plaintiff and the Class  
6 members he seeks to represent:

- 7 (a) failing to pay all wages owed to Class members who either were  
8 discharged, laid off, or resigned in accordance with the requirements of  
9 Labor Code §§ 201, 202, 203;
- 10 (b) failing to pay all wages owed to the Class members twice monthly in  
11 accordance with the requirements of Labor Code § 204;
- 12 (c) failing to pay Class members all wages owed, including all meal and rest  
13 period premium wages, and failing to pay them at the regular rate of  
14 compensation;
- 15 (d) failing to maintain accurate records of Class members' hours worked and  
16 earned wages and meal periods in violation of Labor Code §§ 226 and  
17 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 18 (e) failing to produce timekeeping records in response to Plaintiff's timely and  
19 lawful request to receive them under these authorities.

20 30. Defendants have also consistently failed to provide Class members with timely,  
21 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,  
22 including by the above-described requirement of off the clock work, failure to pay all overtime  
23 and double time wages owed, and failure to pay premium wages for unprovided or otherwise  
24 unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break  
25 premium wages. Defendants have also made it difficult to account with precision for the  
26 unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class,  
27 during the liability period, including to the extent they did pay Employees for all hours worked  
28 and did not calculate the regular rate of pay correctly when paying overtime or meal period

1 premiums and because they did not implement and preserve a record-keeping method as required  
2 for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the  
3 applicable California Wage Orders. Upon information and belief, time clock punches were not  
4 maintained or were not accurately maintained for work shifts and meal periods, which were  
5 automatically presumed by Defendants to have been lawfully provided when they were not.  
6 Defendants also failed to accurately record and pay for all regular and overtime hours worked by  
7 Plaintiff and the Class members, including by failing to pay all overtime hours at the correctly  
8 calculated overtime premium rate.

9         31. When Plaintiff received his pay, he was confused during most pay periods by the  
10 omission of required information, including the rates he was being paid at and the identity of his  
11 employer. Defendants provided Plaintiff, and upon information and belief the other Class  
12 members, with summary documents detailing the payments during a pay period rather than a  
13 compliant wage statement. Plaintiff did not understand who the listed employer was on his pay  
14 summaries because he was used to calling it Eternity Flooring, and Defendants provide no address  
15 for LA Hardwood Flooring Inc. listed as the employer. Defendants have thus also failed to comply  
16 with Labor Code § 226(a) by failing to provide a wage statement and/or inaccurately reporting  
17 total hours worked and total wages earned by Plaintiff and the Class members, along with the  
18 appropriate applicable rates, and by failing to list the employer and omitting the pay period  
19 beginning date on the wage summaries provided, among other requirements under Labor Code §  
20 226(a).

21         32. Defendants have thus failed to provide Plaintiff, and upon information and belief  
22 the similarly situated Class members, accurate and complete itemized wage statements in violation  
23 of sections 204 and 226(a). These violations further evidence the record keeping violations that  
24 Defendants caused by failing to accurately record shift start and end times and by failing to record  
25 meal period start and end times, or inaccurately recording them. Plaintiff and Class members are  
26 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code  
27 § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California  
28 IWC Wage Orders by failing to maintain time records showing when the employee begins and

ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked.

33. Defendants also required Plaintiff and the Class members to work hours off the clock for which they were not compensated and endure off the clock work addressed above during interrupted or otherwise on-duty meal and rest periods and were not provided with sick pay and supplemental sick leave. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a work day, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws.

34. Additionally, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. More specifically, Plaintiff was required to use his personal cellular phone to make and receive work-related calls and messages. While Defendants' did provide a stipend for cellular phones for use in the vehicles and with their mobile applications, Plaintiff and the Class members were required to use their cellular phones so often that they quickly exceeded the stipend. Plaintiff and the Class members had to use their personal cellular phones to communicate with Defendants' managers and customers regarding any issues with a delivery or follow up questions. Defendants did not reimburse Plaintiff and the Class for the necessary cellular phone related expenses they were required to incur in performing their duties.

35. Upon information and belief, the other Class members incurred similar expenses for performing necessary work-related tasks and communications, for which they were also not reimbursed by Defendants. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so. Defendants uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at

1 the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage  
2 Orders, paragraph 9.

3 36. In light of the foregoing, Plaintiff and the Employees in the Class bring this action  
4 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246,  
5 248.1, 248.5, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*, and  
6 California Code of Regulations, Title 8, section 11000 *et seq.*

7 37. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff  
8 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits  
9 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or  
10 fraudulent practices alleged in this Complaint.

### 11 CLASS ALLEGATIONS

12 38. Plaintiff brings this class action on behalf of himself and all others similarly situated  
13 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or  
14 “Class members”) defined as follows: “All individuals employed by Defendants at any time  
15 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as  
16 determined by the Court (“the Class Period”), and who have been employed as non-exempt,  
17 hourly employees within the State of California, including as delivery drivers and in similar and  
18 related positions.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as  
19 follows:

20 a. Subclass 1. Minimum Wages Subclass. All Class members who were not  
21 compensated for all hours worked for Defendants at the applicable minimum wage.

22 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not  
23 compensated for all hours worked for Defendants at the required rates of pay, including for all  
24 hours worked in excess of eight in a day and/or forty in a week.

25 c. Subclass 3. Meal Period Subclass. All Class members who were subject to  
26 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
27 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

39. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

40. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,



1 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged  
2 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time  
3 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the  
4 benefit of this work, required Employees to perform this work and permitted or suffered to permit  
5 this work. Defendants have uniformly denied these Class members wages to which these  
6 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in  
7 order to unfairly cheat the competition and unlawfully profit.

8 41. This action has been brought and may properly be maintained as a class action  
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
10 of interest in this litigation and the proposed Class is easily ascertainable from the employment  
11 records for Plaintiff and the Class members that Defendants are required to maintain under  
12 California law.

13 **A. Numerosity**

14 42. The potential members of the class as defined are so numerous that joinder of all  
15 the member of the class is impracticable. While the precise number of class member has not been  
16 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
17 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the  
18 Class definition within the State of California. Plaintiff alleges that Defendants' employment  
19 records will provide information as to the number and location of all Class members.

20 **B. Commonality**

21 43. There are questions of law and fact common to the Class that predominate over any  
22 questions affecting only individual Class members. The common questions are numerous and  
23 substantial and flow from Defendants' uniform policies and/or practices of violating the California  
24 Labor Code addressed above. As such, these common questions predominate over individual  
25 questions concerning each individual Class Member's showing as to his or her eligibility for  
26 recovery or as to the amount of damages. These common questions of law and fact include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;
- 28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under Labor  
2 Code § 510;
- 3 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
4 IWC Wage Orders, by failing to provide Employees with requisite meal periods or  
5 premium pay in lieu thereof;
- 6 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
7 Orders, by failing to authorize and permit Employees to take requisite rest breaks  
8 or provide premium pay in lieu thereof;
- 9 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not  
10 providing employees with all required sick days and COVID-19 supplemental sick  
11 leave;
- 12 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with  
13 inaccurate wage statements;
- 14 h. Whether Defendants violated Labor Code § 221;
- 15 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay  
16 wages and compensation due and owing at the time of termination of employment;
- 17 j. Whether Defendants' conduct was willful;
- 18 k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage  
19 Orders by failing to maintain accurate records of Class members' earned wages and  
20 work periods;
- 21 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all  
22 Employees during the relevant time period for all hours worked, whether regular or  
23 overtime;
- 24 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all  
25 wages earned at least twice monthly;
- 26 n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary  
27 business expenses incurred by Employees;
- 28 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

**C. Typicality**

44. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

**D. Adequacy of Representation**

45. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

**E. Superiority of Class Action**

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

47. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Employees

1 to vindicate their rights for violations they endured which they would otherwise be foreclosed  
2 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

3 48. Class action treatment will allow those persons similarly situated to litigate their  
4 claims in the manner that is most efficient and economical for the parties and the judicial system.  
5 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
6 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would  
7 set forth the subject and nature of the instant action. The Defendants' own business records can be  
8 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent  
9 that any further notice is required additional media and/or mailings can be used.

10 49. Defendants, as prospective and actual employers of the Employees in the Class,  
11 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding  
12 Defendants' pay practices, policies and working conditions imposed upon the similarly situated  
13 Employees as well as the effect of any alleged arbitration agreements that may have been forced  
14 upon them. In addition, Defendants knew they possessed special knowledge about pay practices  
15 and policies, most notably intentionally refusing to pay for all hours actually worked which should  
16 have been recorded in Defendants' pay records and the consequence of the alleged arbitration  
17 agreements and policies and practices on the Employees and Class as a whole.

18 50. Plaintiff and the Class did not discover the fact that they were entitled to all pay  
19 under the Labor Code until shortly before the filing of this lawsuit nor was there ever any  
20 discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,  
21 right to collectively organize and oppose unlawful pay practices under California law and obtain  
22 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of  
23 limitation were tolled until such time as Plaintiff and the Class members discovered their claims.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Against All Defendants)**

27 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
28 full herein.

1           52. Defendants failed to pay Employees minimum wages for all hours worked.  
2 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees  
3 would work hours and not receive wages, including as alleged above in connection with off the  
4 clock work, and including all the time required to remain on duty and under Defendants' control  
5 during breaks and due to the work demands placed upon them by Defendants' management and  
6 their assigned job duties. Defendants' uniformly applied policies required systematic off the  
7 clock work and underpayment of all wages owed to Employees over a period of time, while  
8 benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay  
9 minimum wages to Plaintiff and the Class members, including by requiring systematic off the  
10 clock work. To the extent any local wage ordinances were also applicable to paying the  
11 employees an hourly rate above the minimum wage rate, Defendants failed to comply with the  
12 local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices  
13 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a  
14 uniform policy and practice that denied accurate compensation to Plaintiff and the other members  
15 of the Class as to minimum wage pay.

16           53. In California, employees must be paid at least the then applicable state minimum  
17 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,  
18 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally,  
19 pursuant to California Labor Code § 204, other applicable laws and regulations, and public  
20 policy, an employer must timely pay its employees for all hours worked. Defendants failed to do  
21 so.

22           54. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
23 states: "The minimum wage for employees fixed by the commission is the minimum wage to be  
24 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The  
25 applicable minimum wage rate fixed by the commission for work during the relevant period is  
26 found in the Wage Orders.

27           55. The minimum wage provisions of California Labor Code are enforceable by private  
28 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to

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

5 56. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
6 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
7 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
8 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
9 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in  
10 the absence of a contractually agreed upon one.

11 57. In committing these violations of the California Labor Code, Defendants  
12 inaccurately recorded, or required Plaintiff and the Class members to input times that did not  
13 reflect their actual hours worked, or miscalculate hours or rates or otherwise underpaid the actual  
14 time worked by Plaintiff and other members of the Class, including by requiring off the clock  
15 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of  
16 all earned wages, and other benefits in violation of the California Labor Code, the Industrial  
17 Welfare Commission requirements and other applicable laws and regulations. As a result of these  
18 violations, Defendants also failed to timely pay all wages earned in accordance with California  
19 Labor Code § 1194.

20 58. California Labor Code § 1194.2 also provides for the following remedies: "In any  
21 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
22 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

24 59. In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
25 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial  
26 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
27 pay each employee minimum wages.

60. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

61. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

62. Plaintiff and the Class members are entitled to recover the unpaid minimum wages (including double minimum wages) and local wage ordinance wages and liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the Class members who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Class members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

**(Against All Defendants)**

63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

64. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
2 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action  
3 may be maintained directly against the employer in an employee's name without first filing a  
4 claim with the Division of Labor Standards and Enforcement.

5         65. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and  
6 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the  
7 Industrial Welfare Commission) by failing to pay Employees for all hours worked, including: (a)  
8 time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
9 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
10 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
11 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
12 (8) hours on any seventh day of work in a workweek.

13         66. Defendants had a consistent policy of not paying Employees wages for all hours  
14 worked, including by requiring off the clock work as addressed above, by under-reporting actual  
15 hours worked, and by requiring Employees to do so as well. Defendants have also failed to include  
16 all forms of remuneration in the regular rate of pay used to calculate and pay overtime, and failed  
17 to begin paying overtime when it was incurred due to the off the clock work, as detailed above.

18         67. Defendants thus had a consistent policy of not paying Employees wages for all  
19 hours worked, including hours at their required regular, overtime, and double-time rates.  
20 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted  
21 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class  
22 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the  
23 Class members all earned and owed straight time and overtime wages and other benefits, in  
24 violation of the California Labor Code, the California Code of Regulations and the IWC Wage  
25 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants  
26 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt  
27 employees to work through meal periods or remain under Defendants' control when they were  
28 required to be clocked out or to otherwise work off the clock to complete their daily job duties and



1 respond to demands from customers and managers. Therefore, Employees were not properly  
2 compensated, nor were they paid overtime rates for hours worked in excess of eight hours or ten  
3 hours in a given day, and/or forty hours in a given week. Based on information and belief,  
4 Defendants did not make available to Employees a reasonable protocol for correcting time records  
5 when Employees worked overtime hours or to fix incorrect time entries or those that Defendants  
6 unlawfully under-recorded to the Employee's detriment. Defendants have also violated these  
7 provisions by requiring Plaintiff and other similarly situated Class members to work through meal  
8 periods when they were required to be clocked out or to otherwise work off the clock to complete  
9 their daily job duties.

10         68. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of  
11 regular wages owed and overtime compensation for all hours worked, as required by California  
12 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable  
13 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the  
14 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

15         69. Additionally, Labor Code § 558(a) provides "any employer or other person acting  
16 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
17 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
18 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
19 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
20 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
21 underpaid employee for each pay period for which the employee was underpaid in addition to an  
22 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
23 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in  
24 this section are in addition to any other civil or criminal penalty provided by law." Defendants  
25 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
26 Wage Orders. Accordingly, Plaintiff seeks the remedies of Labor Code § 558.

27         70. Defendants' failure to pay compensation in a timely fashion also constituted a  
28 violation of California Labor Code § 204, which requires that all wages shall be paid

1 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
2 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
3 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
4 compensation to Employees constitutes a separate violation of California Labor Code § 204.

5 71. Employees have been damaged by these violations of California Labor Code §§  
6 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under  
7 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less  
8 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions  
9 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the  
10 minimum fixed by an order of the commission” or “violates...any provision of this chapter or  
11 any order or ruling of the commission.”

12 72. Consequently, pursuant to the California Labor Code, including Labor Code §§  
13 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including  
14 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of  
15 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus  
16 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties  
17 against Defendants, and each of them, and any additional sums as provided by the Labor Code  
18 and/or other statutes.

### 19 **THIRD CAUSE OF ACTION**

#### 20 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

#### 21 **(Against All Defendants)**

22 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
23 full herein.

24 74. Employees regularly worked shifts greater than five (5) hours and in most  
25 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the  
26 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five  
27 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or  
28 for a shift of more than ten (10) hours without providing him or her with a second meal period of

1 not less than thirty (30) minutes.

2 75. Defendants failed to provide Employees with meal periods as required under the  
3 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required  
4 to work or to otherwise remain under Defendants' control during meal periods, or Defendants  
5 provided them after Employees worked beyond the fifth hour of their shifts or Employees  
6 otherwise had them shortened and interrupted by work demands and requirements to perform off  
7 the clock work and remain under Defendants' control. Furthermore, upon information and belief,  
8 on the occasions when Employees worked more than ten hours in a given shift, they did so  
9 without receiving a second uninterrupted thirty minute meal period as required by law. Defendants  
10 also unlawfully failed to record the start and end times for all meal periods provided to Plaintiff  
11 and the Class members, or else did so inaccurately.

12 76. Defendants thus failed to provide Plaintiff and the Class members with meal  
13 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,  
14 including by not providing them with the opportunity to take meal breaks, by providing them late  
15 or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

16 77. Moreover, Defendants failed to compensate Employees for each meal period not  
17 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and  
18 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an  
19 employee a meal period in accordance with this section, the employer shall pay the employee one  
20 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal  
21 period is not provided. As detailed above, on the occasions when Defendants did pay any meal  
22 period premiums, they upon information and belief underpaid them by miscalculating the regular  
23 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to  
24 compensate the Employees in the Class for each meal period not provided or inadequately  
25 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC  
26 Wage Order.

27 78. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the  
28 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal

1 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or  
2 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory  
3 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and  
4 other statutes and applicable IWC Wage Order paragraphs.

5 **FOURTH CAUSE OF ACTION**

6 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

7 **(Against All Defendants)**

8 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
9 full herein.

10 80. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
11 provide that employers must authorize and permit all employees to take rest periods at the rate of  
12 ten (10) minutes net rest time per four (4) work hours.

13 81. Employees consistently worked consecutive four (4) hour shifts and were generally  
14 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and  
15 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable  
16 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for  
17 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest  
18 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often  
19 required to work or to otherwise remain under Defendants' control during rest periods, including  
20 by responding to work requirements and production demands, and had breaks provided untimely  
21 as a result of the above described off the clock work. Plaintiff and the Class members were also  
22 not permitted to leave their work areas during rest breaks.

23 82. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage  
24 Orders provide that if an employer fails to provide an employee rest period in accordance with this  
25 section, the employer shall pay the employee one hour of pay at the employee's regular rate of  
26 compensation (as further detailed above regarding meal periods) for each workday that the rest  
27 period is not provided. Defendants failed to do so.

1           83. Defendants, and each of them, have therefore intentionally and improperly denied  
2 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and  
3 paragraph 12 of the applicable IWC Wage Orders.

4           84. Defendants failed to authorize and permit Plaintiff and the Class members to take  
5 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees  
6 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed  
7 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs  
8 12 and 20 of the applicable IWC Wage Orders.

9           85. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the  
10 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)  
11 hour of wages at their effective hourly rates of pay for each day worked without the required rest  
12 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against  
13 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

14                                   **FIFTH CAUSE OF ACTION**  
15                                   **VIOLATION OF LABOR CODE § 226(a)**  
16                                   **(Against All Defendants)**

17           86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
18 full herein.

19           87. California Labor Code § 226(a) requires an employer to furnish each of his or her  
20 employees with an accurate, itemized statement in writing showing the gross and net earnings,  
21 total hours worked, and the corresponding number of hours worked at each hourly rate; these  
22 statements must be appended to the detachable part of the check, draft, voucher, or whatever else  
23 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these  
24 statements may be given to the employee separately from the payment of wages; in either case the  
25 employer must give the employee these statements twice a month or each time wages are paid.

26           88. Defendants failed to provide Plaintiff and the similarly situated Employee Class  
27 members with accurate itemized wage statements in writing, as required by the Labor Code and  
28 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to

1 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,  
2 including for all overtime and double time hours worked and for deficient meal periods and rest  
3 breaks, all of which Defendants knew or reasonably should have known were owed to the  
4 Employees, as alleged above. Defendants also provided facially non-compliant wage statement  
5 omitting much of the required information under section 226(a). For example, Defendants failed to  
6 list the correct employer name and omitted an address, and also failed to list the pay period  
7 beginning date and list all applicable hourly rates.

8         89. Throughout the liability period, Defendants intentionally failed to furnish to  
9 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately  
10 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
11 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net  
12 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
13 the employee and only the last four digits of his or her social security number or an employee  
14 identification number other than a social security number, (8) the name and address of the legal  
15 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and  
16 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor  
17 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory  
18 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class  
19 members with such timely and accurate wage and hour statements, as detailed above.

20         90. Plaintiff and the Class members suffered injury as a result of Defendants' knowing  
21 and intentional failure to provide them with the wage and hour statements as required by law and  
22 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the  
23 Defendants have failed to provide an accurate wage statement, failed to provide accurate and  
24 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),  
25 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the  
26 wage statement alone one or more of the following: (i) The amount of the gross wages or net  
27 wages paid to the employee during the pay period or any of the other information required to be  
28 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of

1 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net  
2 wages paid to the employee during the pay period, (iii) The name and address of the employer  
3 and, (iv) The name of the employee and only the last four digits of his or her social security  
4 number or an employee identification number other than a social security number. For purposes  
5 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an  
6 objective standard] would be able to readily ascertain the information without reference to other  
7 documents or information.

8 91. Under paragraph 4(B) of the applicable IWC Wage Orders, employers are required  
9 “to pay each employee, on the established payday for the period involved, not less than the  
10 applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §  
11 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under  
12 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may  
13 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of  
14 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC  
15 Wage Orders.

16 92. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code  
17 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the  
18 Class suffered injuries, including among other things confusion over whether they received all  
19 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing  
20 them to make mathematical computations to analyze whether the wages paid in fact compensated  
21 them correctly for all hours worked.

22 93. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable  
23 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of  
24 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and  
25 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an  
26 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to  
27 an award of costs and reasonable attorneys’ fees.  
28

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 221**  
**(Against All Defendants)**

94. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

96. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work and by automatically deducting time for meal periods when they were not lawfully provided and not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class members, as alleged above.

97. As a direct and proximate cause of the unauthorized deductions, Employees have been damaged, in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 204**  
**(Against All Defendants)**

98. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

99. Labor Code § 204 instructs that: “All 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following



1 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment  
2 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven  
3 calendar days following the close of the payroll period.” As detailed above, Defendants  
4 maintained a consistently applied policy and practice of not paying all wages earned between the  
5 1<sup>st</sup> and 15<sup>th</sup> days of a month between the 16<sup>th</sup> and 26<sup>th</sup> day and failed to pay all wages earned  
6 between the 16<sup>th</sup> and the last day of the month between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.  
7 Defendants similarly failed to pay all wages earned by not more than seven calendar days  
8 following the close of the payroll period.

9 100. All wages due and owing to Plaintiff and the Class members, including as required  
10 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages  
11 required by Labor Code § 1194 and other sections became due and payable to each employee in  
12 each pay period that he or she was not provided with a meal period or rest period or paid straight  
13 or overtime wages to which he or she was entitled.

14 101. Defendants violated Labor Code § 204 by systematically refusing to timely pay  
15 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the  
16 applicable IWC Wage Orders, employers are required “to pay each employee, on the established  
17 payday for the period involved, not less than the applicable minimum wage for all hours worked in  
18 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer  
19 hours than those fixed by the order or under conditions of labor prohibited by the order is  
20 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for  
21 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including  
22 penalties under paragraph 20 of the applicable IWC Wage Orders.

23 102. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
24 represent have been deprived of wages in amounts to be determined at trial, and they are entitled  
25 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,  
26 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the  
27 applicable IWC Wage Orders.  
28

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 203**  
**(Against All Defendants)**

103. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

104. Plaintiff and numerous Class members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

105. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

106. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

107. Defendants failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

108. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay 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, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission" or

1 if the employer pays “a wage less than the minimum fixed by an order of the commission” or  
2 “violates...any provision of this chapter or any order or ruling of the commission.”

3 109. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former  
4 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of  
5 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages  
6 shall continue until paid for up to thirty (30) days from the date they were due.

7 **NINTH CAUSE OF ACTION**

8 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **UNDER LABOR CODE § 2802 (Against All Defendants)**

10 110. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
11 full herein.

12 111. Plaintiff and the Class are informed and believe and based thereon allege that  
13 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for  
14 necessary work related expenses they incurred. Plaintiff was required to use his personal cellular  
15 phone to make and receive work-related calls and messages. While Defendants did provide a work  
16 cellular phone for use in the vehicles, Plaintiff and the Class members were required to leave the  
17 work phone in the truck during deliveries. As a result, when Plaintiff and the Class members were  
18 making deliveries, they had to use their personal cellular phones to communicate with Defendants’  
19 managers and customers regarding any issues with a delivery or follow up questions.. Defendants  
20 did not reimburse Plaintiff and the Class for the necessary cellular phone related expenses they  
21 were required to incur in performing their duties.

22 112. Defendants thus followed a uniform policy and practice of failing to reimburse  
23 Employees for these necessary work related expenses or losses incurred in direct discharge of their  
24 job duties during employment with Defendants and at the direction of the Defendants pursuant to  
25 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

26 113. Defendants’ knowing and willful failure to reimburse lawful necessary work related  
27 expenses and losses to Plaintiff and the Class members resulted in damages because, among other  
28 things, Defendants did not inform employees of their right to be reimbursed for those work related

1 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard  
2 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and  
3 necessary expenses was an expected and essential function of their employment with Defendants  
4 and that failure to incur those expenses would have adverse consequences on their employment.

5 114. Therefore, Plaintiff and the Class members are entitled to reimbursement for any  
6 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9  
7 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while  
8 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed  
9 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the  
10 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

11 **TENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

13 **(Against All Defendants)**

14 115. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
15 full herein.

16 116. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,  
17 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of  
18 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and  
19 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting  
20 the public interest within the meaning of Code of Civil Procedure § 1021.5.

21 117. Plaintiff is a "person" within the meaning of Business & Professions Code  
22 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
23 relief, restitution, and other appropriate equitable relief.

24 118. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
25 business practices. By the conduct alleged herein, Defendants' practices were deceptive and  
26 fraudulent in that Defendants' policy and practice failed to provide the required amount of  
27 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and  
28 Class members for all hours worked, due to systematic business practices as alleged herein that

1 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare  
2 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*  
3 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California  
4 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

5 119. Wage-and-hour laws express fundamental public policies. Paying employees their  
6 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
7 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
8 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
9 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
10 employers and their employees from competitors who lower costs to themselves by failing to  
11 comply with minimum labor standards.

12 120. Defendants have violated statutes and public policies. Through the conduct alleged  
13 in this Complaint Defendants have acted contrary to these public policies, have violated specific  
14 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
15 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,  
16 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
17 guaranteed to all employees under the law.

18 121. Defendants' conduct, as alleged above, constitutes unfair competition in violation  
19 of the Business & Professions Code § 17200 *et seq.*

20 122. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
21 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
22 reasonable care should have known that their conduct was unlawful; therefore their conduct  
23 violates the Business & Professions Code § 17200 *et seq.*

24 123. By the conduct alleged herein, Defendants have engaged and continue to engage in  
25 a business practice which violates California and federal law, including but not limited to, the  
26 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor  
27 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court  
28 should issue declaratory and other equitable relief pursuant to California Business & Professions

1 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
2 competition, including restitution of wages wrongfully withheld.

3 124. As a proximate result of the above-mentioned acts of Defendants, Employees have  
4 been damaged, in a sum to be proven at trial.

5 125. Unless restrained by this Court Defendants will continue to engage in such unlawful  
6 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make  
7 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent  
8 the use by Defendants or their agents or employees of any unlawful or deceptive practice  
9 prohibited by the Business & Professions Code, including but not limited to the disgorgement of  
10 such profits as may be necessary to restore Employees to the money Defendants have unlawfully  
11 failed to pay.

12 **ELEVENTH CAUSE OF ACTION**

13 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

14 **(Against All Defendants)**

15 126. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in  
16 full herein.

17 127. Plaintiff and the Employees in the Class are also aggrieved employees as defined  
18 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and  
19 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time  
20 period.

21 128. In failing to pay Aggrieved Employees minimum wages and overtime, not  
22 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and  
23 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,  
24 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required  
25 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours  
26 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and  
27 paragraph 7 of the applicable IWC Wage Orders.

28

1           129. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699  
2 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,  
3 including the penalty provisions, without limitation, based, inter alia, on the following California  
4 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,  
5 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

6           130. More specifically, after complying with the notice procedures of Labor Code §  
7 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General  
8 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed  
9 underlying claims and seeking penalties as specified by the applicable corresponding provisions,  
10 including as follows:

11           (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all  
12 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime  
13 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and  
14 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking  
15 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,  
16 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant  
17 to Labor Code § 2699(g)(1);

18           (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved  
19 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to  
20 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under  
21 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC  
22 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under  
23 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,  
24 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs  
25 pursuant to Labor Code § 2699(g)(1);

26           (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide  
27 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to  
28 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,

1 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking  
2 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),  
3 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,  
4 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by  
5 providing inaccurate wage statements and failing to maintain records as required under Labor  
6 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor  
7 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a  
8 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial  
9 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent  
10 citation, ...";

11 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at  
12 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,  
13 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,  
14 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20  
15 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code  
16 § 2699(g)(1);

17 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For  
18 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the  
19 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and  
20 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties  
21 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and  
22 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs  
23 pursuant to Labor Code § 2699(g)(1);

24 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For  
25 Defendants' failure to provide Employees with all their required and earned sick days and all their  
26 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil  
27 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,  
28 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to



1 Labor Code § 2699(g)(1); and

2 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:

3 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of  
4 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking  
5 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the  
6 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §  
7 2699(g)(1).

8 131. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seek  
9 the penalties and remedies set forth in Labor Code § 558, which states:

10 (a) Any employer or other person acting on behalf of an employer who violates, or  
11 causes to be violated, a section of this chapter or any provision regulating hours and days of work  
12 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)  
13 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for  
14 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.  
15 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for  
16 each pay period for which the employee was underpaid in addition to an amount sufficient to  
17 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected  
18 employee.

15 (b) If upon inspection or investigation the Labor Commissioner determines that a  
16 person had paid or caused to be paid a wage for overtime work in violation of any provision of this  
17 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare  
18 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,  
19 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a  
20 violation of this chapter shall be the same as those set out in Section 1197.1.

19 (c) The civil penalties provided for in this section are in addition to any other civil or  
20 criminal penalty provided by law.

20 132. Plaintiff has exhausted his administrative remedies by sending a certified letter to  
21 the LWDA and Defendants postmarked on August 16, 2022 (LWDA-CM-902149-22) addressing  
22 in detail the specific provisions of the Labor Code Defendants have violated and addressing the  
23 facts and legal theories to support the alleged violations and requested penalties. The LWDA has  
24 not provided notice of its intent to investigate the alleged violations within 65 calendar days of the  
25 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the  
26 violations addressed herein and in the PAGA Notice letter and the original Complaint.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

1           13.     For an order enjoining Defendants and their agents, servants, and employees, and  
2 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
3 duties as alleged in this Complaint;

4           14.     For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

5           15.     For penalties under Labor Code § 558, as may be proven;

6           16.     For other wages and penalties under the Labor Code as may be proven;

7           17.     For all general, special, and incidental damages as may be proven;

8           18.     For an award of pre-judgment and post-judgment interest;

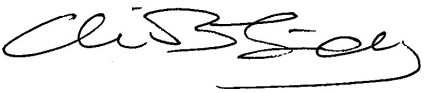
9           19.     For an award providing for the payment of the costs of this suit;

10          20.     For an award of attorneys' fees; and

11          21.     For such other and further relief as this Court may deem proper and just.

12  
13 DATED: October 25, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

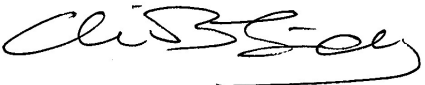
14  
15 By   
16 David Yeremian  
17 Alvin B. Lindsay  
18 Attorneys for Plaintiff Ricardo Antonio  
19 Perez Flores and all others similarly situated  
20  
21  
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28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: October 25, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By   
David Yeremian  
Alvin B. Lindsay  
Attorneys for Plaintiff Ricardo Antonio  
Perez Flores and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

Raviv Netzhah  
[rnetzhah@netshemlaw.com](mailto:rnetzhah@netshemlaw.com)  
**NETZAH & SHEM-TOV, INC.**  
 15260 Ventura Blvd., Suite 1850  
 Sherman Oaks, California 91403

[ ] **(BY ELECTRONIC SERVICE VIA CASE ANYWHERE)** Based on a court order, I caused the above-entitled document(s) to be served through Case Anywhere at [www.caseanywhere.com](http://www.caseanywhere.com) addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

**[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION)** by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

Executed on October 25, 2022, at La Crescenta, California.

Natalia Bermudes  
Natalia Bermudes

|                                                                                                                                                                                                                        |                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b><br><b>Branch Name:</b> Spring Street Courthouse<br><b>Mailing Address:</b> 312 North Spring Street<br><b>City, State and Zip Code:</b> Los Angeles CA 90012 |                                    |
| <b>SHORT TITLE:</b> RICARDO ANTONIO PEREZ FLORES vs L.A HARDWOOD FLOORING, INC.                                                                                                                                        | <b>CASE NUMBER:</b><br>22STCV26518 |
| <b>NOTICE OF CONFIRMATION OF ELECTRONIC FILING</b>                                                                                                                                                                     |                                    |

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

### **Electronic Filing Summary Data**

Electronically Submitted By: Legal Connect  
 Reference Number: 6542109\_2022\_10\_25\_11\_37\_35\_749\_2  
 Submission Number: 22LA01345914  
 Court Received Date: 10/25/2022  
 Court Received Time: 11:41 am  
 Case Number: 22STCV26518  
 Case Title: RICARDO ANTONIO PEREZ FLORES vs L.A HARDWOOD FLOORING, INC.  
 Location: Spring Street Courthouse  
 Case Type: Civil Unlimited  
 Case Category: Other Employment Complaint Case  
 Jurisdictional Amount: Over \$25,000  
 Notice Generated Date: 10/25/2022  
 Notice Generated Time: 3:31 pm

| <b><u>Documents Electronically Filed/Received</u></b> | <b><u>Status</u></b> |
|-------------------------------------------------------|----------------------|
| Amended Complaint                                     | Accepted             |
| Notice (name extension)                               | Accepted             |

### **Comments**

Submitter's Comments:

Clerk's Comments:

### **Electronic Filing Service Provider Information**

Service Provider: Legal Connect

Contact: Legal Connect

Phone: (800) 909-6859