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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

RICHARD MARQUEZ, individually, and
 on behalf of other members of the general
 public similarly situated, and as an
 aggrieved employee pursuant to the Private
 Attorneys General Act ("PAGA"),

Plaintiff,

vs.

OSMOSE UTILITIES SERVICES, INC., a
 Delaware corporation; and DOES 1 through
 10, inclusive,

Defendants.

Case No.: 22STCV29480

**FIRST AMENDED CLASS ACTION
 COMPLAINT & ENFORCEMENT
 ACTION UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE §§ 2698, ET
 SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Richard Marquez, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice.

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

26 THE PARTIES

27 4. Plaintiff Richard Marquez is a resident of West Covina, in Los Angeles County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from

1 approximately December 2020 to October 2021. Plaintiff worked as an Overhead Detail
2 Inspector/Technician based out of Defendants' location in West Covina, California. During his
3 employment, Plaintiff typically worked eight (8) to ten (10) hours or more per day and four (4)
4 to six (6) days per week. Plaintiff's primary job duties included, without limitation, assessing
5 utility poles for damage, taking and sending pictures of utility poles to clients and management,
6 and scanning in GPS information.

7 5. OSMOSE UTILITIES SERVICES, INC. was and is, upon information and
8 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
9 employees are engaged throughout this county and the State of California.

10 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
11 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
12 complaint and serve such fictitiously named Defendants once their names and capacities
13 become known.

14 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
15 were the partners, agents, owners, or managers of OSMOSE UTILITIES SERVICES, INC. at
16 all relevant times.

17 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
18 acts and omissions alleged herein was performed by, or is attributable to, OSMOSE UTILITIES
19 SERVICES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "OSMOSE"), each
20 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
21 each of the other co-Defendants and was acting within the course and scope of such agency,
22 employment, joint venture, or concerted activity with legal authority to act on the others' behalf.
23 The acts of any and all Defendants were in accordance with, and represent, the official policy
24 of Defendants.

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

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

4 **GENERAL ALLEGATIONS**

5 11. Defendants provide infrastructure support services for electric and
6 telecommunications utilities. Upon information and belief, Defendants maintain a single,
7 centralized Human Resources (“HR”) department at their company headquarters in Peachtree
8 City, Georgia, which is responsible for the recruiting and hiring of new employees, and
9 communicating and implementing Defendants’ company-wide policies, including timekeeping
10 policies and meal and rest period policies, to employees throughout California.

11 12. In particular, Plaintiff and class members, on information and belief, received
12 the same standardized documents and/or written policies. Upon information and belief, the
13 usage of standardized documents and/or written policies, including new-hire documents,
14 indicate that Defendants dictated policies at the corporate level and implemented them
15 company-wide, regardless of their employees’ assigned locations or positions. Upon
16 information and belief, Defendants set forth uniform policies and procedures in several
17 documents provided at an employee’s time of hire.

18 13. Upon information and belief, Defendants maintain a centralized Payroll
19 department at their company headquarters in Peachtree City, Georgia, which processes payroll
20 for all non-exempt, hourly paid employees working for Defendants at their various locations
21 and jobsites in California, including Plaintiff and class members. Based upon information and
22 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
23 employees in California, irrespective of their work locations. Upon information and belief,
24 Defendants process payroll for departing employees in the same manner throughout the State
25 of California, regardless of the manner in which each employee’s employment ends.

26 14. Defendants continue to employ non-exempt or hourly paid employees in
27 California.

28 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
2 advisors knowledgeable about California labor and wage law, employment and personnel
3 practices, and about the requirements of California law.

4 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
5 members were not paid for all hours worked because all hours worked were not recorded.

6 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive certain wages for
8 overtime compensation and that they were not receiving certain wages for overtime
9 compensation.

10 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive at least minimum
12 wages for compensation and that they were not receiving at least minimum wages for work that
13 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
14 class members were not paid at least minimum wages for work done off-the-clock.

15 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to meal periods in accordance
17 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
18 additional hour of pay at their regular rates of pay when they were not provided with timely,
19 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
20 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
21 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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

1 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

2 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive complete and
4 accurate wage statements in accordance with California law. In violation of the California
5 Labor Code, Plaintiff and class members were not provided complete and accurate wage
6 statements.

7 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that they had a duty to maintain accurate and complete payroll records in
9 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
10 knowingly, and intentionally failed to do so.

11 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to timely payment of all
13 wages earned upon termination of employment. In violation of the California Labor Code,
14 Plaintiff and class members did not receive payment of all wages due, including, but not limited
15 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
16 time periods.

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to timely payment of wages
19 during their employment. In violation of the California Labor Code, Plaintiff and class members
20 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
21 wages, and/or meal and rest period premiums, within permissible time periods.

22 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full reimbursement
24 for all business-related expenses and costs they incurred during the course and scope of their
25 employment and that they did not receive full reimbursement of applicable business-related
26 expenses and costs incurred.

27 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 Plaintiff and class members with written notice of the material terms of their employment with
2 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

3 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, that Defendants knew or should have known that they had a duty to provide Plaintiff
5 and class members with safety devices and safeguards to protect their life, health, and safety in
6 the workplace, but failed to do so.

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

13 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated, including the facts and theories to support the alleged violation.
- 5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(a) and any employer response to that notice shall be accompanied
7 by a filing fee of seventy-five dollars (\$75).
- 8 (c) The LWDA shall notify the employer and the aggrieved employee or
9 representative by certified mail that it does not intend to investigate the
10 alleged violation ("LWDA Notice") within sixty (60) calendar days of the
11 postmark date of the aggrieved employee's notice. Upon receipt of the
12 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
13 calendar days of the postmark date of the aggrieved employee's notice,
14 the aggrieved employee may commence a civil action pursuant to
15 California Labor Code section 2699 to recover civil penalties.

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

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be accompanied
26 by a filing fee of seventy-five dollars (\$75).
- 27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice sent by the aggrieved

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

8 34. On September 28, 2022, Plaintiff provided written notice by online filing to the
9 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
10 Code alleged to have been violated, including facts and theories to support the alleged
11 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
12 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
13 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
14 PAGA Case Number LWDA-CM-910742-22. On September 29, 2022, Plaintiff filed an
15 amended written notice by online filing to the LWDA and by certified mail to Defendants of
16 the specific provisions of the California Labor Code alleged to have been violated,
17 supplementing and/or clarifying the facts and theories to support the alleged violations set forth
18 in his original LWDA notice, in accordance with California Labor Code section 2699.3. True
19 and correct copies of Plaintiff's written notices to the LWDA and Defendants dated September
20 28, 2022, and September 29, 2022, are attached hereto as "Exhibit 1."

21 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
22 sent the notices described above to the LWDA, and the LWDA has not responded that it intends
23 to investigate Plaintiff's claims and Defendants have not cured the violations.

24 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
26 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
27 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

28 37. Labor Code section 558(a) provides "[a]ny employer or other person acting on

1 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provision regulating hours and days of work in any order of the Industrial Welfare Commission
3 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
4 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
5 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
6 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
7 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
8 criminal penalty provided by law.”

9 38. Defendants, at all times relevant to this complaint, were employers or persons
10 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
11 rights by violating various sections of the California Labor Code as set forth above.

12 39. As set forth below, Defendants have violated numerous provisions of both the
13 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
14 Order.

15 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
16 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
17 private attorney general, seeks assessment and collection of civil penalties for herself, all other
18 aggrieved employees, and the State of California against Defendants for violations of California
19 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
20 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

21 **CLASS ACTION ALLEGATIONS**

22 41. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
23 other persons similarly situated, and thus seeks class certification under California Code of Civil
24 Procedure section 382.

25 42. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

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1 43. Plaintiff's proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, at any time from June 1, 2020, until
 the date of trial ("Class").

4 44. Plaintiff's proposed subclass consists of and is defined as follows:

5 All persons who worked for Defendants as non-exempt, hourly
6 paid employees in California and who received at least one wage
7 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

8 45. Members of the Class and Subclass are referred to herein as "class members."

9 46. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

12 47. There are common questions of law and fact as to class members that
13 predominate over questions affecting only individual members, including, but not limited to:

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
16 hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
- 20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
- 22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
- 24 (e) Whether Defendants provided Plaintiff and class members with complete
25 and accurate wage statements as required by California Labor Code
26 section 226(a);
- 27 (f) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (g) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, and/or meal and rest period premiums due to Plaintiff and class
3 members upon their discharge;
- 4 (h) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, and/or meal and rest period premiums due to Plaintiff and class
6 members during their employment;
- 7 (i) Whether Defendants failed to reimburse Plaintiff and class members for
8 necessary and required business-related expenditures and/or losses
9 incurred by them in the scope of their employment;
- 10 (j) Whether Defendants failed to provide written notice of information
11 material to Plaintiff's and class members' employment with Defendants;
- 12 (k) Whether Defendants failed to provide Plaintiff and class members with
13 safety devices and safeguards, such as personal protective equipment;
- 14 (l) Whether Defendants engaged in unlawful and unfair business practices in
15 violation of California Business & Professions Code sections 17200, *et*
16 *seq.*; and
- 17 (m) The appropriate amount of damages, restitution, or monetary penalties
18 resulting from Defendants' violations of California law.

19 48. There is a well-defined community of interest in the litigation and the class
20 members are readily ascertainable:

- 21 (a) Numerosity: The class members are so numerous that joinder of all
22 members would be unfeasible and impractical. The membership of the
23 entire class is unknown to Plaintiff at this time; however, the class is
24 estimated to be greater than one hundred (100) individuals and the
25 identity of such membership is readily ascertainable by inspection of
26 Defendants' employment records.
- 27 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
28 the interests of each class member with whom he has a well-defined

community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

4 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 50. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

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

15 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
17 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
18 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

19 53. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
21 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
22 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
23 employee, including nondiscretionary bonuses and incentive pay.

24 54. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
27 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
28 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on

1 the seventh (7th) day of work.

2 55. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
4 members were not paid overtime premiums for all of the hours they worked in excess of eight
5 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
6 in a week, because all hours worked were not recorded.

7 56. First, Defendants had, and continue to have, a company-wide policy and/or
8 practice of discouraging and impeding Plaintiff and class members from recording hours
9 worked that were outside of their scheduled shifts in order to limit the amount of overtime
10 employees could accrue. On information and belief, this policy of limiting overtime, coupled
11 with Defendants' practice of assigning heavy workloads and productivity expectations (*see*
12 *infra*), led Plaintiff and class members to work off-the-clock outside of their scheduled shift
13 times in order to complete their assigned tasks. Because Defendants discouraged overtime
14 accrual, Plaintiff and class members were required to complete assigned tasks outside of their
15 scheduled shifts without being compensated for the time they worked.

16 57. For example, Plaintiff was required to assess at least 30 utility poles per eight (8)
17 hour shift. In order to meet this productivity requirement, Plaintiff was often forced to work
18 after his scheduled shifts to hit the pole quota and to complete administrative work, time for
19 which he was not paid. As another example, after Plaintiff had clocked out for his scheduled
20 shift, Defendants' management called Plaintiff to discuss progress on his pole quota and other
21 work-related matters. Additionally, Plaintiff was required to complete online training modules,
22 but he was not permitted to complete them during his shifts. As a result, he was forced to review
23 materials and complete modules before or after his scheduled shifts and/or on days off, time for
24 which he was not paid.

25 58. Second, during the relevant time period, Defendants required Plaintiff and class
26 members to travel to distant jobsites and assignments, but did not compensate them for their
27 time spent traveling to and from these locations. For example, Plaintiff typically worked at
28 jobsites in the greater Los Angeles area, but Defendants sometimes assigned him to sites outside

1 of his usual geographic area. As a result, Plaintiff was required to drive from his home in West
2 Covina, California, to jobsites that were substantially farther away, such as Palm Springs,
3 Bakersfield, Orange County, and Tehachapi, California. Because Plaintiff and class members
4 were not allowed to clock in until arriving at the assigned jobsite for the start of their scheduled
5 shifts, and were required to clock out when leaving the assigned job site at the end of their
6 scheduled shifts, they were not paid for any time spent traveling to or from these distant jobsites.
7 Thus, Plaintiff and class members were not compensated for this travel time, despite being under
8 the direction and control of Defendants.

9 59. Third, on information and belief, Defendants had a company-wide policy and/or
10 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
11 system to the nearest quarter (0.25) of an hour. Defendants' rounding policy resulted in the
12 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
13 and class members to not be paid overtime wages for all of the overtime hours they actually
14 worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
15 underpayment of wages to Plaintiff and class members. To the extent Defendants' rounding
16 policy has taken away time worked that was eligible for overtime, Plaintiff and class members
17 were denied overtime pay for all hours worked.

18 60. Fourth, as stated, Defendants had, and continue to have, a company-wide policy
19 and/or practice of assigning heavy workloads, including pressuring employees to meet deadlines
20 and productivity requirements, such that Plaintiff and class members were prevented from
21 taking all timely, uninterrupted 30-minute meal periods, and were forced to work off-the-clock
22 during their meal periods to complete their assigned duties. Defendants also had a practice of
23 failing to schedule meal periods, which further caused Plaintiff and class members to not be
24 relieved of their duties for compliant meal periods. For example, Plaintiff's meal periods were
25 interrupted by his supervisors requesting updates on his pole count and location over the phone.
26 On other occasions, Plaintiff missed his meal periods entirely due to the heavy workload and
27 requirement to meet quotas. Thus, Plaintiff and class members missed meal periods and/or had
28 meal periods cut short or interrupted in order to complete their assigned workloads and meet

1 productivity expectations. Defendants did not compensate Plaintiff and class members for the
2 time they spent working off the clock during meal periods.

3 61. Fifth, on information and belief, because Defendants frowned upon employees
4 accruing meal period penalties, Defendants' management pressured Plaintiff and class members
5 to clock out for meal periods regardless of whether they had received a compliant meal period
6 or not, in order to strictly limit the meal penalties that would need to be paid by Defendants.
7 Thus, Defendants did not record all hours worked during meal periods, and Plaintiff and class
8 members performed work during meal periods for which they were not paid.

9 62. Sixth, Defendants had, and continue to have, a company-wide practice or policy
10 of requiring that Plaintiff and class members respond to their personal mobile devices and/or
11 personal cellular phones at all times, including during unpaid meal periods. Defendants
12 expected that Plaintiff and class members respond to calls and/or text messages promptly to
13 discuss work-related matters. For example, Plaintiff would have his meal periods interrupted
14 and/or shortened to discuss work-related tasks with Defendants' managers. Defendants knew
15 or should have known that Plaintiff and class members were performing work while off-the-
16 clock in order to meet Defendants' expectations, but failed to compensate them for this time.

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

24 64. Defendants' failure to pay Plaintiff and class members the balance of overtime
25 compensation as required by California law, violates the provisions of California Labor Code
26 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
27 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
28 and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

67. As set forth above, due to Defendants’ restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and class members for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Because Defendants discouraged and impeded Plaintiff and class members from recording hours worked that were outside of their scheduled shifts, Plaintiff and class members were required to perform work off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off, including assessing utility poles to meet quotas, speaking with management about their progress, and completing training modules. Moreover, due to Defendants’ timekeeping policies, Plaintiff and class members were not compensated properly for the time spent traveling to and from distant jobsites. Additionally, as stated above, Defendants had a company-wide policy and/or practice of rounding Plaintiff’s and class members’ hourly clock-in and clock-out times in their timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked.

68. Further, as also stated, due to Defendants’ policies and/or practices of assigning heavy workloads, pressuring employees to meet deadlines and productivity requirements,

1 failing to schedule meal periods, and requiring employees to respond to calls at all times,
2 Plaintiff and class members were impeded from taking all uninterrupted meal periods to which
3 they were entitled and were required to work off-the-clock during meal periods. Moreover, as
4 stated, in order to prevent employees from accruing meal period penalties, upon information
5 and belief, Defendants' management pressured employees to clock out for meal periods even
6 when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically
7 failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods
8 because these hours were not always correctly recorded.

9 69. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
10 and class members. To the extent that these off-the-clock hours did not qualify for overtime
11 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
12 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

13 70. Defendants' failure to pay Plaintiff and class members minimum wages violates
14 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
15 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
16 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

17 **THIRD CAUSE OF ACTION**

18 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

19 **Violations**

20 **(Against all Defendants)**

21 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 72. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is not
27 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
28 and the employee. Under California law, first meal periods must start after no more than five

1 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

2 73. At all relevant times herein set forth, California Labor Code sections 226.7,
3 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
4 meal period mandated by an applicable order of the IWC.

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

11 75. First, during the relevant time period, as stated, Defendants had, and continue to
12 have, a company-wide policy and/or practice of assigning heavy workloads, including pressure
13 to meet deadlines and productivity requirements, which prevented Plaintiff and class members
14 from taking all timely, uninterrupted meal periods to which they were entitled. Further, as
15 stated, Defendants' company-wide practices and/or policies of failing to schedule meal periods
16 and requiring employees to use their personal mobile devices and/or personal cellular phones
17 to communicate with supervisors during meal periods, further caused Plaintiff and class
18 members to not be relieved of their duties for compliant meal periods.

19 76. As a result, Plaintiff and class members would be forced to work in excess of
20 five (5) hours before taking a meal period and, at times, had to forgo their meal periods
21 altogether. For example, because of Defendants' policy and/or practice of assigning heavy
22 workloads and productivity requirements, Plaintiff had to forgo his meal periods or take his
23 meal periods late, after the end of his fifth hour of work. Moreover, Plaintiff's meal periods
24 were interrupted by his supervisors calling to discuss progress on his pole quota, his location,
25 and other work-related matters.

26 77. Second, as set forth above, because Defendants frowned upon employees
27 accruing meal period penalties, Defendants' management pressured employees to clock out for
28 meal periods to reflect compliant meal periods, regardless of whether they had received a

1 compliant meal period or not, in order to strictly limit the meal penalties that would need to be
2 paid by Defendants.

3 78. Third, Defendants did not provide Plaintiff and class members with second 30-
4 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
5 his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
6 never provided a second 30-minute meal period. Plaintiff and class members did not sign valid
7 meal period waivers on days that they were entitled to meal periods and were not relieved of all
8 duties.

9 79. At all times herein mentioned, Defendants knew or should have known that, as a
10 result of these policies, Plaintiff and class members were prevented from being relieved of all
11 duties and required to perform some of their assigned duties during meal periods. Defendants
12 further knew or should have known that Defendants did not pay Plaintiff and class members
13 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

14 80. As set forth above, Defendants have a company-wide policy and/or practice of
15 rounding employee clock-in and clock-out times in their timekeeping system, which prevented
16 Plaintiff and class members from receiving all meal period premiums when they took late and/or
17 shortened meal periods. As stated, Defendants' rounding policy rounded employees' clock-in
18 and clock-out times in their timekeeping system to the nearest quarter (0.25) of an hour. To the
19 extent that Defendants' timekeeping system reported that Plaintiff and class members were
20 provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken
21 after the fifth hour of work or were less than 30 minutes, Plaintiff and class members were
22 entitled to a meal period penalty. Thus, Plaintiff and class members did not receive meal period
23 penalties for these improperly rounded meal periods.

24 81. Moreover, Defendants engaged in a company-wide practice and/or policy of not
25 paying all meal period premiums owed when compliant meal periods are not provided. Because
26 of this practice and/or policy, Plaintiff and class members have not received premium pay for
27 missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
28 and class members compliant meal periods in violation of California Labor Code sections 226.7,

1 512(a), and 516 and failed to pay the full meal period premiums due.

2 82. Defendants' conduct violates the applicable IWC Wage Order, and California
3 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
4 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
5 rate of compensation for each work day that the meal period was not provided.

6 **FOURTH CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
8 **(Against all Defendants)**

9 83. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 84. At all relevant times herein set forth, the applicable IWC Wage Order and
12 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
13 members' employment by Defendants.

14 85. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be
17 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
18 hours or major fraction thereof" unless the total daily work time is less than three and one-half
19 (3 ½) hours.

20 86. At all relevant times, California Labor Code section 226.7 provides that no
21 employer shall require an employee to work during any rest period mandated by an applicable
22 order of the California IWC. To comply with its obligation to authorize and permit rest periods
23 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
24 must "relinquish any control over how employees spend their break time, and relieve their
25 employees of all duties—including the obligation that an employee remain on call. A rest
26 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
27 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
28 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)

1 additional hour of pay at their regular rates of pay for each work day that a required rest period
2 was not authorized and permitted.

3 87. During the relevant time period, Defendants regularly failed to authorize and
4 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
5 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
6 practices, including assigning heavy workloads and pressuring employees to meet deadlines and
7 productivity requirements, and requiring that Plaintiff and class members respond to
8 communications from management on their personal mobile devices and/or personal cellular
9 phones, prevented Plaintiff and class members from being relieved of all duty to take rest
10 periods. Additionally, Defendants wholly failed to schedule rest periods, which further led to
11 Plaintiff and class members not being authorized and permitted to take rest periods.

12 88. Furthermore, on information and belief, Defendants maintained and
13 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
14 and/or class members remain on the premises during their rest periods. Because Plaintiff and/or
15 class members were restricted from leaving Defendants' premises during rest periods, they were
16 denied the ability to use their rest periods freely for their own purposes, such as completing
17 personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or class
18 members during rest periods.

19 89. As a result of Defendants' practices and policies, Plaintiff and class members
20 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
21 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
22 Plaintiff had to forego his rest periods because of the heavy workload and Defendants' failure
23 to schedule rest periods for employees.

24 90. Defendants have also engaged in a company-wide practice and/or policy of not
25 paying all rest period premiums owed when compliant rest periods are not authorized and
26 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
27 premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and class
28 members rest periods and failed to pay them rest period premiums due, in violation of Labor

Code sections 226.7 and 516, and the applicable IWC Wage Order.

91. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

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

92. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

94. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

95. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock, improperly rounded Plaintiff's and Subclass members' total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the

1 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in
2 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
3 accurately list the total number of hours worked by Plaintiff and Subclass members, in violation
4 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
5 period and the corresponding accurate number of hours worked at each hourly rate, in violation
6 of section 226(a)(9).

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

15 97. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
23 members showing the daily hours they worked and the wages paid thereto as a result of failing
24 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
25 Subclass members’ total hours worked.

26 98. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
28 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment

1 of any employees for longer hours than those fixed by the order or under conditions of labor
2 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
3 are required to keep accurate time records showing when the employee begins and ends each
4 work period and meal period. During the relevant time period, Defendants failed, on a
5 company-wide basis, to keep accurate records of work period and meal period start and stop
6 times for Plaintiff and Subclass members, in violation of section 1198. Also, in light of
7 Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal
8 periods to which they were entitled, Defendants kept no records of meal start and end times for
9 second meal periods.

10 99. Plaintiff and Subclass members are entitled to recover from Defendants the
11 greater of their actual damages caused by Defendants’ failure to comply with California Labor
12 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
13 employee.

14 **SIXTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 16 **Termination** 17 **(Against all Defendants)**

18 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 101. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
22 Plaintiff and those class members no longer employed by Defendants upon their termination.

23 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
24 that if an employer discharges an employee, the wages earned and unpaid at the time of
25 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
26 her employment, his or her wages shall become due and payable not later than seventy-two (72)
27 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
28 or her intention to quit, in which case the employee is entitled to his or her wages at the time of

1 quitting.

2 103. Defendants willfully failed to pay Plaintiff and class members who are no longer
3 employed by Defendants the earned and unpaid wages set forth above, including but not limited
4 to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time
5 of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

6 104. Defendants' failure to pay Plaintiff and class members who are no longer
7 employed by Defendants their wages earned and unpaid at the time of discharge, or within
8 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
9 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
10 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
11 thirty (30) day maximum pursuant to California Labor Code section 203.

12 SEVENTH CAUSE OF ACTION

13 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 14 **Employment** 15 **(Against all Defendants)**

16 105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 106. This cause of action is dependent upon, and wholly derivative of, the overtime
19 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
20 Plaintiff and class members during their employment.

21 107. At all times relevant herein set forth, Labor Code section 204 provides that all
22 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
23 days, inclusive, of any calendar month, other than those wages due upon termination of an
24 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
25 the month during which the labor was performed.

26 108. At all times relevant herein, Labor Code section 204 provides that all wages
27 earned by any person in any employment between the sixteenth (16th) and the last day,
28 inclusive, of any calendar month, other than those wages due upon termination of an employee,

are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

110. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within the time periods specified by California Labor Code section 204.

111. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

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

1 provide and maintain hand tools and equipment customarily required by the trade or craft.”

2 114. First, during the relevant time period, Defendants, on a company-wide basis,
3 required Plaintiff and class members to use their personal mobile devices, including, but not
4 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse
5 them for the costs of their work-related mobile device and/or mobile data expenses. For
6 example, Plaintiff was required to download mobile applications on his personal mobile device
7 to access training modules and to communicate with his supervisors via electronic mail.
8 Further, on a regular basis, Plaintiff was required to use the camera on his personal mobile
9 device to take pictures of the poles he had inspected and send the pictures to management and
10 clients via text message. Additionally, as stated, Defendants contacted Plaintiff on his personal
11 mobile device to discuss his progress on pole counts and his location. Defendants required
12 Plaintiff and class members to use their personal mobile devices and mobile data to carry out
13 their work-related duties, Defendants failed to reimburse them for their costs incurred.

14 115. Second, during the relevant time period, Defendants required Plaintiff and class
15 members to purchase supplies and equipment necessary for the performance of their duties, but
16 failed to reimburse them for their out-of-pocket costs. For example, Plaintiff spent about \$100
17 on replacement binoculars, and up to \$40 on a monocular to fulfill his training duties. Plaintiff
18 was also required to buy a power charger and peripherals for company-provided electronic
19 devices, such as a bag to store them in. Although Defendants required Plaintiff and class
20 members to purchase supplies and equipment to carry out their work-related responsibilities,
21 Defendants failed to reimburse them for their out-of-pocket costs to purchase necessary supplies
22 and equipment.

23 116. Third, during the relevant time period, Defendants, on a company-wide basis,
24 required Plaintiff and class members to wear special safety shoes such as steel-toed boots, which
25 they were required to wear while at work and necessary for the completion of their work-related
26 duties. Plaintiff spent around \$250 on a pair of safety boots during his employment, but was
27 not reimbursed for his costs.

28 117. Defendants could have provided Plaintiff and class members with the actual

1 equipment for use on the job, such as company mobile devices, safety boots, and supplies and
2 equipment; or Defendants could have reimbursed employees for the costs of their mobile device
3 usage, boot expenses, supply expenses. Instead, Defendants passed these operating costs off
4 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)
5 times the minimum wage.

6 118. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
8 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
9 business-related expenses and costs.

10 119. Plaintiff and class members are entitled to recover from Defendants their
11 business-related expenses incurred during the course and scope of their employment, plus
12 interest.

13 **NINTH CAUSE OF ACTION**

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

15 **(Against all Defendants)**

16 120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 121. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
20 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
21 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
22 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
23 Code sections not found in section 2699.5, including sections 516, 1182.12, 2810.5, 6401, and
24 6403.

25 122. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
28 Wage Order for Defendants' failure to compensate Plaintiff and other

- aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein;
- (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendants, as set forth below;
- and

1 (k) Violation of Labor Code sections 6401 and 6401 for failure to provide
2 Plaintiff and other aggrieved employees with safety devices and
3 safeguards for the workplace, as set forth below.

4 123. At all relevant times herein, California's Wage Theft Prevention Act was enacted
5 to ensure that employers provide employees with basic information material to their
6 employment relationship at the time of hiring, and to ensure that employees are given written
7 and timely notice of any changes to basic information material to their employment. Codified
8 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
9 time of hiring, an employer must provide written notice to employees containing basic and
10 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
11 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
12 any rates for overtime, the regular payday designated by the employer, and any allowances
13 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
14 § 2810.5(a)(1)(A)-(C).

15 124. At all relevant times, on information and belief, Defendants failed, on a
16 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
17 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
18 failure to provide Plaintiff and other aggrieved employees with written notice of basic
19 information regarding their employment with Defendants is in violation of Labor Code section
20 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
21 pursuant to Labor Code sections 2699(a), (f), and (g).

22 125. At all relevant times herein, California Labor Code section 6401 provides that
23 employers must furnish and use safety devices and safeguards, and adopt and use practices,
24 means, methods, operations, and processes which are reasonably adequate to render the
25 employment and place of employment safe and healthy. California Labor Code Section 6401
26 further provides that an employer must do everything reasonably necessary to protect the life,
27 safety and health of their employees.

28 126. During the relevant period, Defendants failed to provide Plaintiff and other

1 aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them
2 safe in the workplace. Despite the fact that Defendants required Plaintiff and other aggrieved
3 employees to wear certain personal protective equipment, including steel-toed boots, while
4 engaged in their work-related duties, Defendants failed to provide such reasonably necessary
5 equipment to Plaintiff and other aggrieved employees to keep them safe.

6 127. Defendants' failure to provide Plaintiff and other aggrieved employees with
7 safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code section 2699(a), (f), and (g).

10 **TENTH CAUSE OF ACTION**

11 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

12 **Unlawful Business Practices**

13 **(Against all Defendants)**

14 128. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 129. Defendants are "persons" as defined by California Business & Professions Code
17 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
18 associations.

19 130. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
20 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
21 suffered injury in fact and has lost money as a result of Defendants' unlawful business practices.
22 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
23 Code of Civil Procedure section 1021.5.

24 131. Defendants' activities, as alleged herein, are violations of California law, and
25 constitute unlawful business acts and practices in violation of California Business & Professions
26 Code sections 17200, *et seq.*

27 132. A violation of California Business & Professions Code sections 17200, *et seq.*
28 may be predicated on the violation of any state or federal law. In the instant case, Defendants'

1 policies and practices have violated state law in at least the following respects:

- 2 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
3 class members, to work overtime without paying them proper
4 compensation in violation of California Labor Code sections 510 and
5 1198 and the applicable IWC Wage Order, as alleged herein;
- 6 (b) Failing to pay at least minimum wage to Plaintiff and class members in
7 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
8 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
10 members in violation of California Labor Code sections 226.7, 512(a),
11 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (d) Failing to authorize and permit Plaintiff and class members to take
13 uninterrupted rest periods in violation of California Labor Code sections
14 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (e) Failing to provide Plaintiff and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation of
18 California Labor Code sections 226(a), 1174(d), and 1198, and the
19 applicable IWC Wage Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204, as alleged herein;
- 22 (g) Failing to reimburse Plaintiff and class members for all business expenses
23 necessarily incurred in violation of California Labor Code section 2802,
24 as alleged herein;
- 25 (h) Failing to provide written notice of information material to Plaintiff's and
26 class members' employment with Defendants in violation of California
27 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below; and
- 28 (i) Failing to provide Plaintiff and class members with safety devices and

1 safeguards, such as personal protective equipment, in violation of
2 California Labor Code sections 6401 and 6403, as set forth below.

3 133. At all relevant times herein, California's Wage Theft Prevention Act was enacted
4 to ensure that employers provide employees with basic information material to their
5 employment relationship at the time of hiring, and to ensure that employees are given written
6 and timely notice of any changes to basic information material to their employment. Codified
7 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
8 time of hiring, an employer must provide written notice to employees containing basic and
9 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
10 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
11 any rates for overtime, the regular payday designated by the employer, and any allowances
12 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
13 § 2810.5(a)(1)(A)-(C).

14 134. At all relevant times, on information and belief, Defendants failed, on a
15 company-wide basis, to provide written notice to Plaintiff and class members that lists the
16 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
17 to provide Plaintiff and class members with written notice of basic information regarding their
18 employment with Defendants is in violation of California Labor Code section 2810.5.

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

27 136. During the relevant period, as stated above, Defendants failed to provide Plaintiff
28 and class members with personal protective equipment, such as steel-toed boots, to keep them

1 safe in the workplace. Despite the fact that Defendants required Plaintiff and class members to
2 wear certain personal protective equipment, including steel-toed boots, while engaged in their
3 work-related duties, Defendants failed to provide such reasonably necessary equipment to
4 Plaintiff and class members to keep them safe. Thus, Defendants' failure to provide Plaintiff
5 and class members with safety devices and safeguards for the workplace violates Labor Code
6 sections 6401 and 6403.

7 137. As a result of the violations of California law herein described, Defendants
8 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
9 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

10 138. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
11 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
12 Defendants during a period that commences four years prior to the filing of this complaint; a
13 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
14 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
15 section 1021.5 and other applicable laws; and an award of costs.

16 **ELEVENTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

18 **Unfair Business Practices**

19 **(Against all Defendants)**

20 139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 140. Defendants are "persons" as defined by California Business & Professions Code
23 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
24 associations.

25 141. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
26 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
27 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
28 enforce important rights affecting the public interest within the meaning of Code of Civil

1 Procedure section 1021.5.

2 142. Defendants' activities, namely Defendants' company-wide practice and/or policy
3 of not paying Plaintiff and class members meal and rest period premiums due to them under
4 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
5 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
6 section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and
7 secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
8 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
9 class members as part of their employment with Defendants, and thus Defendants' practice
10 and/or policy of denying these statutory benefits constitutes an unfair business practice in
11 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

12 143. A violation of California Business & Professions Code sections 17200, *et seq.*
13 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
14 practices have violated the spirit of California's meal and rest period laws and constitute acts
15 against the public policy behind these laws.

16 144. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
17 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
18 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
19 commences four years prior to the filing of this complaint; a permanent injunction requiring
20 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
21 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5 and other applicable laws; and an award of costs.

23 **REQUEST FOR JURY TRIAL**

24 Plaintiff requests a trial by jury.

25 **PRAYER FOR RELIEF**

26 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
27 Defendants, jointly and severally, as follows:

- 28 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in

1 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
2 reserves the right to amend his prayer for relief to seek a different amount.

3 **Class Certification**

4 2. That this case be certified as a class action;

5 3. That Plaintiff be appointed as the representative of the Class and Subclass;

6 4. That counsel for Plaintiff be appointed as class counsel.

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

8 5. That the Court declare, adjudge, and decree that Defendants violated California
9 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
10 pay all overtime wages due to Plaintiff and class members;

11 6. For general unpaid wages at overtime wage rates and such general and special
12 damages as may be appropriate;

13 7. For pre-judgment interest on any unpaid overtime compensation commencing
14 from the date such amounts were due, or as otherwise provided by law;

15 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a); and

17 9. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Second Cause of Action**

20 10. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
22 Order by willfully failing to pay minimum wages to Plaintiff and class members;

23 11. For general unpaid wages and such general and special damages as may be
24 appropriate;

25 12. For pre-judgment interest on any unpaid compensation from the date such
26 amounts were due, or as otherwise provided by law;

27 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
28 California Labor Code section 1194(a);

1 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
2 15. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Third Cause of Action**

5 16. That the Court declare, adjudge, and decree that Defendants violated California
6 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
7 willfully failing to provide all meal periods to Plaintiff and class members;

8 17. That the Court make an award to the Plaintiff and class members of one (1) hour
9 of pay at each employee's regular rate of pay for each workday that a meal period was not
10 provided;

11 18. For all actual, consequential, and incidental losses and damages, according to
12 proof;

13 19. For premiums pursuant to California Labor Code section 226.7(c);

14 20. For pre-judgment interest on any unpaid meal period premiums from the date
15 such amounts were due, or as otherwise provided by law;

16 21. For attorneys' fees pursuant to California Code of Civil Procedure section
17 1021.5, or as otherwise provided by law; and

18 22. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Fourth Cause of Action**

21 23. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
23 failing to authorize and permit Plaintiff and class members to take all rest periods;

24 24. That the Court make an award to the Plaintiff and class members of one (1) hour
25 of pay at each employee's regular rate of pay for each workday that a rest period was not
26 authorized and permitted;

27 25. For all actual, consequential, and incidental losses and damages, according to
28 proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code

1 section 203 for all employees who have left Defendants' employ;

2 39. For pre-judgment interest on any unpaid wages from the date such amounts were
3 due, or as otherwise provided by law;

4 40. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

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

8 **As to the Seventh Cause of Action**

9 42. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
11 wages, minimum wages, and/or meal and rest period premiums during their employment;

12 43. For all actual, consequential and incidental losses and damages, according to
13 proof;

14 44. For statutory penalties according to proof pursuant to California Labor Code
15 section 210;

16 45. For pre-judgment interest on any unpaid wages from the date such amounts were
17 due, or as otherwise provided by law;

18 46. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 47. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eighth Cause of Action**

23 48. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
25 expenses and costs incurred by Plaintiff and class members;

26 49. For unpaid business-related expenses and such general and special damages as
27 may be appropriate;

28 50. For pre-judgment interest on any unpaid business-related expenses from the date

1 such amounts were due, or as otherwise provided by law;

2 51. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
5 or as otherwise provided by law; and

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

8 **As to the Ninth Cause of Action**

9 54. That the Court declare, adjudge and decree that Defendants violated the
10 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
11 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
12 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
13 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
14 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
15 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
16 earned wages upon termination); 204 (by failing to timely pay all earned wages during
17 employment); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide
18 notice of material terms of employment); and 6401 and 6403 (by failing to provide safety
19 devices and safeguards);

20 55. For civil penalties pursuant to the California Labor Code, including sections 210,
21 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
22 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
23 2802, 2810.5, 6401, and 6403;

24 56. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
26 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
27 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

28 57. For pre-judgment and post-judgment interest as provided by law; and

1 58. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Tenth Cause of Action**

4 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
5 to provide Plaintiff and class members all overtime wages due to them, failing to provide
6 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
7 class members all meal periods, failing to authorize and permit Plaintiff and class members to
8 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
9 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
10 to timely pay Plaintiff and class members all earned wages during employment, failing to
11 reimburse Plaintiff and class members for business-related expenses, failing to provide notice
12 of material terms of employment, and failing to provide safety devices and safeguards,
13 constitutes an unlawful business practice in violation of California Business and Professions
14 Code sections 17200, *et seq.*;

15 60. For restitution of unpaid wages to Plaintiff and all class members and
16 prejudgment interest from the day such amounts were due and payable;

17 61. For the appointment of a receiver to receive, manage, and distribute any and all
18 funds disgorged from Defendants and determined to have been wrongfully acquired by
19 Defendants as a result of violations of California Business & Professions Code sections 17200,
20 *et seq.*;

21 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Code of Civil Procedure section 1021.5; and

23 63. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Eleventh Cause of Action**

26 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
27 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
28 unfair business practice in violation of California Business and Professions Code sections

1 17200, *et seq.*;

2 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
3 from Plaintiff and class members and prejudgment interest from the day such amounts were due
4 and payable;

5 66. For the appointment of a receiver to receive, manage, and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200,
8 *et seq.*;

9 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5;

11 68. For pre-judgment and post-judgment interest as provided by law; and
12 For such other and further relief as the Court may deem equitable and appropriate.
13

14 Dated: December 5, 2022

Respectfully submitted,

Capstone Law APC

16 By: 
17

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

19 Attorneys for Plaintiff Richard Marquez
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EXHIBIT “1”



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SAIRAH BUDHWANI
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September 28, 2022

VIA ONLINE SUBMISSION

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

Subject: *Richard Marquez v. Osmose Utilities Services, Inc.*

Dear PAGA Administrator:

This office represents Richard Marquez in connection with his claims under the California Labor Code. Mr. Marquez was an employee of OSMOSE UTILITIES SERVICES, INC. ("OSMOSE").

The employer may be contacted directly at the address below:

OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269

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

OSMOSE employed Mr. Marquez as an hourly paid, non-exempt employee from approximately December 2020 to October 2021. Mr. Marquez worked for OSMOSE as an Overhead Detail Inspector/Technician based out of OSMOSE's location in West Covina, California. During his employment, Mr. Marquez typically worked eight (8) to ten (10) or more hours per day and four (4) to six (6) days per week. At the time his employment ended, Mr. Marquez was compensated approximately \$20.00 per hour. Mr. Marquez's primary job duties included, without limitation, assessing utility poles for damage, taking and sending pictures of utility poles to clients and management, and scanning in GPS information.

OSMOSE committed one or more of the following Labor Code violations against Mr. Marquez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

OSMOSE’s Company-Wide and Uniform Payroll and HR Practices

OSMOSE UTILITIES SERVICES, INC. is a Delaware corporation that provides infrastructure support services for electric and telecommunications utilities across California. Upon information and belief, OSMOSE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Peachtree City, Georgia, for all non-exempt, hourly paid employees working for OSMOSE in California, including Mr. Marquez and other aggrieved employees. At all relevant times, OSMOSE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Marquez and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

First, OSMOSE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Marquez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with OSMOSE's practice of assigning heavy workloads and productivity expectations (*see infra*), led Mr. Marquez and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. Because OSMOSE discouraged overtime accrual, Mr. Marquez and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, Mr. Marquez was required to assess at least 30 utility poles per eight (8) hour shift. In order to meet this productivity requirement, Mr. Marquez was often forced to work after his scheduled shifts to hit the pole quota and to complete administrative work, time for which he was not paid. As another example, after Mr. Marquez had clocked out for his scheduled shift, OSMOSE's management called Mr. Marquez to discuss progress on his pole quota and other work-related matters. Additionally, Mr. Marquez was required to complete online training modules, but he was not permitted to complete them during his shifts. As a result, he was forced to review materials and complete modules before or after his scheduled shifts and/or on days off, time for which he was not paid.

Second, during the relevant time period, OSMOSE required Mr. Marquez and other aggrieved employees to travel to distant jobsites and assignments, but did not compensate them for their time spent traveling to and from these locations. For example, Mr. Marquez typically worked at jobsites in the greater Los Angeles area, but OSMOSE sometimes assigned him to sites outside of his usual geographic area. As a result, Mr. Marquez was required to drive from his home in West Covina, California, to jobsites that were substantially farther away, such as Palm Springs, Bakersfield, Orange County, and Tehachapi, California. Because Mr. Marquez and other aggrieved employees were not allowed to clock in until arriving at the assigned jobsite for the start of their scheduled shifts, and were required to clock out when leaving the assigned job site at the end of their scheduled shifts, they were not paid for any time spent traveling to or from these distant jobsites. Thus, Mr. Marquez and other aggrieved employees were not compensated for this travel time, despite being under the direction and control of OSMOSE.

Third, on information and belief, OSMOSE had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. OSMOSE's rounding policy resulted in the failure to compensate Mr. Marquez and other aggrieved employees fully for all hours worked, causing Mr. Marquez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. OSMOSE's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Marquez and other aggrieved employees. To the extent OSMOSE's rounding policy has taken away time worked that was eligible for overtime, Mr. Marquez and other aggrieved employees were denied overtime pay for all hours worked.

Fourth, as stated, OSMOSE had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressuring employees to meet deadlines and productivity requirements, such that Mr. Marquez and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods, and were forced to work off-the-clock during their meal periods to complete their assigned duties. OSMOSE also had a practice of failing to schedule meal periods, which further caused Mr. Marquez and other aggrieved employees to not be relieved of

their duties for compliant meal periods. For example, Mr. Marquez's meal periods were interrupted by his supervisors requesting updates on his pole count and location over the phone. On other occasions, Mr. Marquez missed his meal periods entirely due to the heavy workload and requirement to meet quotas. Thus, Mr. Marquez and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to complete their assigned workloads and meet productivity expectations. OSMOSE did not compensate Mr. Marquez and other aggrieved employees for the time they spent working off the clock during meal periods.

Fifth, on information and belief, because OSMOSE frowned upon employees accruing meal period penalties, OSMOSE's management pressured Mr. Marquez and other aggrieved employees to clock out for meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by OSMOSE. Thus, OSMOSE did not record all hours worked during meal periods, and Mr. Marquez and other aggrieved employees performed work during meal periods for which they were not paid.

Sixth, OSMOSE had, and continues to have, a company-wide practice or policy of requiring that Mr. Marquez and other aggrieved employees respond to their personal mobile devices and/or personal cellular phones at all times, including during unpaid meal periods. OSMOSE expected that Mr. Marquez and other aggrieved employees respond to calls and/or text messages promptly to discuss work-related matters. For example, Mr. Marquez would have his meal periods interrupted and/or shortened to discuss work-related tasks with OSMOSE's managers. OSMOSE knew or should have known that Mr. Marquez and other aggrieved employees were performing work while off-the-clock in order to meet OSMOSE's expectations, but failed to compensate them for this time.

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

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

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

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

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

As set forth above, due to OSMOSE’s restrictions on overtime accrual, OSMOSE systematically failed to pay Mr. Marquez and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. Because OSMOSE discouraged and impeded Mr. Marquez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Marquez and other aggrieved employees were required to perform work off-the-clock prior to the start of their shifts, after their shifts, and/or on their days off, including assessing utility poles to meet quotas, speaking with management about their progress, and completing training modules. Moreover, due to OSMOSE’s timekeeping policies, Mr. Marquez and other aggrieved employees were not compensated properly for the time spent traveling to and from distant jobsites. Additionally, as stated above, OSMOSE had a company-wide policy and/or practice of rounding Mr. Marquez’s and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked.

Further, as also stated, due to OSMOSE’s policies and/or practices of assigning heavy workloads, pressuring employees to meet deadlines and productivity requirements, failing to schedule meal periods, and requiring employees to respond to calls at all times, Mr. Marquez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, OSMOSE’s management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, OSMOSE systematically failed to pay Mr. Marquez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, OSMOSE did not pay at least minimum wages for all hours worked by Mr. Marquez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, OSMOSE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, OSMOSE regularly failed to pay at least minimum wages to Mr. Marquez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Marquez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

First, during the relevant time period, as stated, OSMOSE had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressure to meet deadlines and productivity requirements, which prevented Mr. Marquez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, OSMOSE's company-wide practices and/or policies of failing to schedule meal periods and requiring employees to use their personal mobile devices and/or personal cellular phones to communicate with supervisors during meal periods further caused Mr. Marquez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Marquez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had to forgo their meal periods altogether. For example, because of OSMOSE's policy and/or practice of assigning heavy workloads and productivity requirements, Mr. Marquez had to forgo his meal periods or take his meal periods late, after the end of his fifth hour of work. Moreover, Mr. Marquez's meal periods were interrupted by his supervisors calling to discuss progress on his pole quota, his location, and other work-related matters.

Second, as set forth above, because OSMOSE frowned upon employees accruing meal period penalties, OSMOSE's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by OSMOSE.

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

At all times herein mentioned, OSMOSE knew or should have known that, as a result of these policies, Mr. Marquez and other aggrieved employees were prevented from being relieved of all duties and/or required to perform some of their assigned duties during meal periods. OSMOSE further knew or should have known that it did not pay Mr. Marquez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

As set forth above, OSMOSE has a company-wide policy and/or practice of rounding employee clock-in and clock-out times in its timekeeping system, which prevented Mr. Marquez and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, OSMOSE's rounding policy rounded employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. To the extent that OSMOSE's timekeeping system reported that Mr. Marquez and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Marquez and other aggrieved employees were entitled to a meal period penalty. Thus, Mr. Marquez and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Moreover, OSMOSE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Marquez and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that OSMOSE did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, OSMOSE did not pay other aggrieved employees at the correct rate of pay for premiums because OSMOSE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the

obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, OSMOSE regularly failed to authorize and permit Mr. Marquez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, OSMOSE’s company-wide practices, including assigning heavy workloads and pressuring employees to meet deadlines and productivity requirements, and requiring that Mr. Marquez and other aggrieved employees respond to communications from management on their personal mobile devices and/or personal cellular phones, prevented Mr. Marquez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, OSMOSE wholly failed to schedule rest periods, which further led to Mr. Marquez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, OSMOSE maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Marquez and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Marquez and/or other aggrieved employees were restricted from leaving OSMOSE’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, OSMOSE effectively maintained control over Mr. Marquez and/or other aggrieved employees during rest periods.

As a result of OSMOSE’s practices and policies, Mr. Marquez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Marquez had to forego his rest periods because of the heavy workload and OSMOSE’s failure to schedule rest periods for employees.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. OSMOSE has not provided Mr. Marquez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for

the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

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

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

1174(d), OSMOSE willfully failed to maintain accurate payroll records for Mr. Marquez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Marquez's and other aggrieved employees' total hours worked.

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

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

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

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

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

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

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, OSMOSE, on a company-wide basis, required Mr. Marquez and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Marquez was required to download mobile applications on his personal mobile device to access training modules and to communicate with his supervisors via electronic mail. Further, on a regular basis, Mr. Marquez was required to use the camera on his personal mobile device to take pictures of the poles he had inspected and send the pictures to management and clients via text message. Additionally, as stated, OSMOSE contacted Mr. Marquez on his personal mobile device to discuss his progress on pole counts and his location. Although OSMOSE required Mr. Marquez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, OSMOSE failed to reimburse them for their costs incurred.

Second, during the relevant time period, OSMOSE required Mr. Marquez and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Marquez spent about \$100 on replacement binoculars, and up to \$40 on a monocular to fulfill his training duties. Mr. Marquez was also required to buy a power charger and peripherals for company-provided electronic devices, such as a bag to store them in. Although OSMOSE required Mr. Marquez and other aggrieved

employees to purchase supplies and equipment to carry out their work-related responsibilities, OSMOSE failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Third, during the relevant time period, OSMOSE, on a company-wide basis, required Mr. Marquez and other aggrieved employees to wear special safety shoes such as steel-toed boots, which they were required to wear while at work and necessary for the completion of their work-related duties. Mr. Marquez spent around \$250 on a pair of safety boots during his employment, but was not reimbursed for his costs.

OSMOSE could have provided Mr. Marquez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, safety boots, and supplies and equipment; or OSMOSE could have reimbursed employees for their mobile device usage, safety boots, and supplies and equipment; or OSMOSE could have reimbursed employees for the costs of their mobile device usage, boot expenses, and supply expenses. Instead, OSMOSE passed these operating costs off onto Mr. Marquez and other aggrieved employees. At all relevant times, Mr. Marquez did not earn at least two (2) times the minimum wage.

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

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

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

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

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

California Labor Code § 558(a)

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

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

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

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

Sairah Budhwani
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1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Sairah Budhwani

Copy: OSMOSE UTILITIES SERVICES, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



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OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269

PS Form 3800, April 2010 Edition
Instructions

OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
B. Received by (Printed Name) ☐ Addressee
C. Date of Delivery

1. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express[®]
☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

2. Address Number (Transfer from service label)

SENDER: COMPLETE THIS SECTION

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OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269



2. Addressed to Trans for 2122131930

7022 2410 0000 2406 3447

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

9/30

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No**Service Type**

Adult Signature

Adult Signature Restricted Delivery

☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail

Registered Mail Restricted Delivery

(\$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

September 29, 2022

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Richard Marquez v. Osmose Utilities Services, Inc.*
LWDA Case No. LWDA-CM-910742-22 - AMENDED NOTICE

Dear PAGA Administrator:

This office represents Richard Marquez in connection with his claims under the California Labor Code. Mr. Marquez was an employee of OSMOSE UTILITIES SERVICES, INC. ("OSMOSE"). We previously provided notice of Mr. Marquez's claims to the California Labor and Workforce Development Agency ("LWDA") on September 28, 2022, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Marquez's prior LWDA notice and adds an additional claim.

The employer may be contacted directly at the address below:

OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269

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

OSMOSE employed Mr. Marquez as an hourly paid, non-exempt employee from approximately December 2020 to October 2021. Mr. Marquez worked for OSMOSE as an Overhead Detail Inspector/Technician based out of OSMOSE's location in West Covina, California. During his employment, Mr. Marquez typically worked eight (8) to ten (10) or more hours per day and four (4) to six (6) days per week. At the time his employment ended, Mr. Marquez was compensated approximately \$20.00 per hour. Mr. Marquez's primary job duties included, without limitation,

assessing utility poles for damage, taking and sending pictures of utility poles to clients and management, and scanning in GPS information.

OSMOSE has committed one or more of the following Labor Code violations against Mr. Marquez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

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

During the relevant period, OSMOSE failed to provide Mr. Marquez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that OSMOSE required Mr. Marquez and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, while engaged in their work-related duties, OSMOSE failed to provide such reasonably necessary equipment to Mr. Marquez and other aggrieved employees to keep them safe.

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

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Marquez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against OSMOSE for violations of California Labor Code sections 6401 and 6403.

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

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

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

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

Best Regards,

A handwritten signature in black ink that reads "Sairah Budhwani". The signature is written in a cursive, flowing style with a small dot at the end.

Sairah Budhwani

Copy: OSMOSE UTILITIES SERVICES, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

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Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

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Here

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635 HWY 74 S

PEACHTREE CITY, GA 30269

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635 HWY 74 S

PEACHTREE CITY, GA 30269

SENDER: COMPLETE THIS SECTION

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- ☒ Attach this card to the back of the mailpiece.

OSMOSE UTILITIES SERVICES, INC.

635 HWY 74 S

PEACHTREE CITY, GA 30269

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature Restricted Delivery

☐ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Registered Mail[™]

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☐ Signature Confirmation Restricted Delivery

☐ Priority Mail Express[®]

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☐ Signature Confirmation[™]

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2. A05500 0440 711506 0011 15 10-23

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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3.

Print your name and address on the reverse
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OSMOSE UTILITIES SERVICES, INC.
635 HWY 74 S
PEACHTREE CITY, GA 30269



2. Article Number (Transit Office Service Label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Nora Nichols*☒ Agent☐ Addressee

B. Received by (Printed Name)

NORA NICHOLS

C. Date of Delivery

10/03/22

Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **December 5, 2022**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

James C. Fessenden (SBN: 238663)
jfessenden@fisherphillips.com
Steven D. Eheart (SBN: 332772)
seheart@fisherphillips.com
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Tel.: (858) 597-9600
Fax: (858) 597-9601

Attorneys for Defendant
OSMOSE UTILITIES SERVICES, INC

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 5, 2022**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature