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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LAKE

WILLIAM COLEMAN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PROENERGY CRAFTS, INC., a Missouri
corporation; EVAPTECH, INC., a Maryland
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CV423136

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) **FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**
- (5) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (6) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*);**

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**(7) FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS
(LABOR CODE § 226 *et seq.*; and**

**(8) FAILURE TO PAY ALL WAGES
UPON TERMINATION OF
EMPLOYMENT (LABOR CODE §
201-203)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff William Coleman (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against ProEnergy Crafts, Inc., a Missouri corporation; Evaptech, Inc., a Maryland corporation;
4 and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 FAC for recovery of unpaid wages and penalties under California Business and Professions Code
9 § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2,
10 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 4 (“Wage Order 4”),
11 in addition to seeking declaratory relief and restitution. This FAC is brought pursuant to
12 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
13 of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Lake. Defendants transact business throughout Southern California, including Lake
19 County and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
24 each cause of action pled herein, Plaintiff was employed by Defendants as an hourly, non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and
28 California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage

Order 4, which sets employment standards for professional, technical, clerical, mechanical and similar occupations, which includes flaggers like Plaintiff.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Lawsuit in this action and continuing to the present, Defendants did (and continue to do) business by providing third-party solutions for the energy industry, including technical services, field services, operations and maintenance, asset management, and monitoring and diagnostics. Defendants employed Plaintiff and other, similarly-situated non-exempt, hourly employees within, among other counties, Lake County and the state of California and, therefore, were (and are) doing business in Lake County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course

1 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
3 members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff was employed by Defendants as an hourly, non-exempt employee and
6 assigned to work in California in 2020. During his employment with Defendants, Defendants
7 directed Plaintiff to work at a power plant located in Middletown, California, where he was
8 responsible for installing cooling towers, among other job duties.

9 10. Throughout Plaintiff's employment with Defendants in California, Plaintiff was
10 generally scheduled to work Monday through Friday from approximately 6:30 a.m. or 7:00 a.m.
11 to approximately 5:00 p.m., and sometimes worked shifts of 12 or more hours. During at least a
12 portion of Plaintiff's employment, Plaintiff was not fully paid for all time worked due to
13 Defendants' timekeeping policies and practices which failed to at all times require Plaintiff to
14 record his actual work time. Specifically, during at least a portion of the relevant time period,
15 Defendants had policies and practices of having supervisors record the start and stop time for
16 employees. As a result of this policy or practice, Defendants failed to properly account for and
17 track all time actually worked by Plaintiff, and also failed to pay Plaintiff all required minimum
18 wages. Further, because Plaintiff would often work more than eight (8) hours per day and/or forty
19 (40) hours per week, Defendants' timekeeping policies and practices also deprived Plaintiff of
20 overtime wages owed to him. Defendant's timekeeping policies and practices applied to Plaintiff
21 and other non-exempt, hourly employees. As a result, Plaintiff and other non-exempt, hourly
22 employees were deprived of all required minimum and overtime wages due.

23 11. Additionally, during his employment with Defendants in California, Plaintiff was
24 not fully paid for all time worked due to Defendants' timekeeping policies and practices because
25 Defendants would unlawfully shave Plaintiff's work time and/or round Plaintiff's work time such
26 that Plaintiff would not be fully paid all wages he was rightfully owed. This time
27 shaving/rounding practice utilized by Defendants was not-even handed over time and would
28 round and/or shave in Defendants' favor such that Plaintiff and other non-exempt hourly

1 employees were routinely underpaid for their time worked, including minimum wages. As a
2 result of this policy or practice, Defendants failed to properly account for and track all time
3 actually worked by Plaintiff and other non-exempt employees, and also failed to pay Plaintiff and
4 non-exempt employees all required minimum wages. Further, Plaintiff and other non-exempt,
5 hourly employees often worked over eight hours in a day and/or 40 hours in a week, and
6 Defendants' policy and practice of failing to compensate them for all hours worked also deprived
7 them of all overtime wages owed.

8 12. While working for Defendants in California, Plaintiff routinely worked in excess
9 of eight hours per workday and/or more than forty hours per workweek, but did not receive
10 overtime compensation equal to one and one-half times their regular rate of pay for working
11 overtime hours. Specifically, Plaintiff received non-discretionary bonuses, per diems, and/or
12 other forms of pay not excludable as a matter of law when calculating an employee's regular rate
13 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").
14 Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt, hourly
15 employees, Defendants' policies and/or procedures failed to include all forms of Incentive Pay
16 when calculating the regular rate of pay, thereby causing Plaintiff and other non-exempt, hourly
17 employees to be underpaid all of their required overtime wages. As a result, Defendants failed to
18 pay Plaintiff and other non-exempt, hourly employees all required overtime wages.

19 13. During his employment with Defendants in California, Plaintiff was not provided
20 all legally required meal periods due to Defendants' unlawful meal period policies and practices.
21 Throughout his employment with Defendants in California, Plaintiff was not provided all required
22 meal periods due to Defendants' meal period policies/practices which fail to provide timely
23 uninterrupted, duty-free and timely 30-minute meal periods. In addition, Defendants failed to
24 maintain policies and practices requiring employees to record the start and stop times for meal
25 periods, in violation of California law. As a result of Defendants' unlawful meal period policies
26 and practices, Plaintiff and other non-exempt, hourly employees' meal periods were often late or
27 otherwise unlawful. Additionally, during times when Plaintiff worked in excess of 10.0 hours per
28 shift, Defendants' meal period policies and practices failed to provide Plaintiff and other non-

1 exempt, hourly employees with a second, timely meal period of at least 30 minutes in length.

2 14. Although Plaintiff was not provided with all legally-compliant meal periods to
3 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
4 premium for each workday in which he experienced a meal period violation as mandated by Labor
5 Code § 226.7. Upon information and belief during at least a portion of the relevant time period,
6 Defendants maintained no payroll code or other mechanism for the payment of meal period
7 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
8 was not provided to their hourly, non-exempt employees.

9 15. Plaintiff was also not authorized and permitted to take all legally required paid rest
10 periods due to Defendants' unlawful rest period policies and practices. Specifically, Plaintiff
11 worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid
12 rest period for every four (4) hour period worked, or major fraction thereof. Additionally, during
13 times when Plaintiff worked in excess of 10.0 hours per shift, Defendants failed to authorize or
14 permit a third ten-minute paid rest period. Accordingly, Defendants' rest period policies and
15 practices fail to authorize and permit Plaintiff and other non-exempt, hourly employees to take
16 duty-free rest periods for every four hours worked, or major fraction thereof.

17 16. On those occasions when Plaintiff was not authorized and permitted to take all
18 legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff
19 with the required rest period premium for each workday in which he experienced a rest period
20 violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at
21 least a portion of the class period, Defendants maintained no payroll code or other mechanism for
22 paying rest period premiums when Defendants failed to provide a legally compliant rest period.

23 17. As a result of Defendants' failure to pay all minimum and overtime wages, as well
24 failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll
25 records and issued inaccurate wage statements to Plaintiff and other hourly, non-exempt
26 employees.

27 18. As a further result of Defendants' failure to pay all minimum and overtime wages,
28 as well as the failure to pay all meal and rest period premium wages, Defendants failed to timely

1 pay all wages owed to Plaintiff upon his separation of employment from Defendants.

2 **CLASS ACTION ALLEGATIONS**

3 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
4 following Classes pursuant to § 382 of the Code of Civil Procedure:

5 a. The Minimum Wage Class consists of all of Defendants' current and former
6 hourly, non-exempt employees in California who were subject to Defendants'
7 timekeeping policies/practices, during the four years preceding the filing of this
8 lawsuit through the present.

9 b. The Overtime Class consists of all of Defendants' current and former hourly, non-
10 exempt employees in California who worked more than eight hours per day and/or
11 forty hours per week, and were subject to Defendants' timekeeping policies and
12 practices, during the four years immediately preceding the filing of this lawsuit
13 through the present.

14 c. The Meal Period Class consists of all of Defendants' current and former hourly,
15 non-exempt employees in California who worked at least one shift in excess of 5.0
16 hours during the four years immediately preceding the filing of this lawsuit
17 through the present.

18 d. The Rest Period Class consists of all of Defendants' current and former hourly,
19 non-exempt employees in California who worked at least one shift of 3.5 hours or
20 more, during the four years immediately preceding the filing of this lawsuit
21 through the present.

22 e. The Wage Statement Class consists of all members of the Minimum Wage Class,
23 during the one year immediately preceding the filing of the lawsuit through the
24 present.

25 f. The Waiting Time Penalty Class consists of Defendants' non-exempt employees
26 who separated from employment during the three years immediately preceding the
27 filing of the lawsuit through the present.

28 20. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii)

Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) Wage Statement Class, during the four years immediately preceding the filing of this lawsuit through the present. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants' properly paid all minimum wages and/or overtime wages at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants provided accurate, itemized wage statements to members of the Classes;
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices

described above, and whether as a result Defendants owe the classes restitution.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal and/or rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as an hourly, non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive all meal and rest period premium wages when he was not provided compliant meal and rest periods, was not provided with accurate, itemized wage statements, and was not paid all wages owed to him at the time of his separation of employment with Defendant.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee were required to file an
5 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Moreover, requiring each member of the
8 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
9 employees who would be disinclined to file an action against their former and/or current employer
10 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
11 employment. Further, the prosecution of separate actions by the individual class members, even
12 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
13 with respect to the individual class members against Defendants herein; and which would
14 establish potentially incompatible standards of conduct for Defendants; and/or legal
15 determinations with respect to individual class members which would, as a practical matter, be
16 dispositive of the interest of the other class members not parties to adjudications or which would
17 substantially impair or impede the ability of the class members to protect their interests. Further,
18 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
20 As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the
21 Code of Civil Procedure.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MINIMUM WAGES OWED**

24 **(AGAINST ALL DEFENDANTS)**

25 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
26 fully set forth herein.

27 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
28 and 1198 which provide that all non-exempt hourly employees are entitled to all minimum wages

for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

29. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 4. Wage Order 4, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

30. At all relevant times herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

31. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and

1 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
2 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
3 right of action for the failure to pay all overtime compensation for overtime work performed.

4 34. At all times relevant herein Defendants were required to properly compensate
5 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
6 California Labor Code §§ 510 and 1194, and Wage Order 4. Labor Code § 510 and Wage Order
7 4, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular
8 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek.
9 Labor Code § 510 and Wage Order 4, Section 3 also require an employer to pay an employee
10 double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess
11 of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff
12 and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours
13 in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class
14 at one and one-half their regular rate of pay for such hours.

15 35. The foregoing practices and policies are unlawful and create entitlement to
16 recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
17 amount of overtime premium owing, including interest thereon, as well as statutory penalties,
18 civil penalties, and attorneys’ fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
19 510, 558, 1194 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil
20 Code §§ 3287(b) and 3289.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(AGAINST ALL DEFENDANTS)**

24 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
26 in their affirmative obligation to provide all of their non-exempt employees in California, including
27 Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in
28 accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite

1 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
2 of the Meal Period Class at their respective regular rates of compensation, in accordance with
3 California Labor Code §§ 226.7, and 512.

4 38. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations including interest thereon, as well as statutory penalties, civil penalties, and costs
6 of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 4, California Code of Civil
7 Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

10 **(AGAINST ALL DEFENDANTS)**

11 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 40. Wage Order 4, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
13 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
14 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

15 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
16 of the Rest Period Class to take all required rest periods.

17 42. The foregoing violations create an entitlement to recovery by Plaintiff and
18 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
19 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
20 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

21 **FIFTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 44. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 *et seq.*, by failing to authorize and permit all required rest periods, or pay premium payments in
28 lieu thereof.

1 45. Defendants' utilization of these unfair and/or unlawful business practices deprived
2 Plaintiff and continues to deprive members of the Classes of compensation to which they are
3 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
4 over Defendants' competitors who have been and/or are currently employing workers and
5 attempting to do so in honest compliance with applicable wage and hour laws.

6 46. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
7 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
8 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
9 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

10 47. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
12 of Defendants' current non-exempt employees, and to enforce important rights affecting the
13 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
14 which he is entitled to recover under Code of Civil Procedure § 1021.5.

15
16 **SIXTH CAUSE OF ACTION**

17 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

18 **(AGAINST ALL DEFENDANTS)**

19 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 49. Defendants have committed several Labor Code violations against Plaintiff and
21 other Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor
22 Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this
23 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
24 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
25 2699 (a) and (f) including, but not limited to: (1) \$250.00 for each initial violation and \$1,000.00
26 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or
27 (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
28 pay period for those violations of the Labor Code for which no civil penalty is specifically

provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other Aggrieved Employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other Aggrieved Employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other Aggrieved Employees;
- e) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other Aggrieved Employees all earned wages at least twice during each calendar month; and
- f) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other Aggrieved Employees;
- g) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other Aggrieved Employees with accurate and compliant itemized wage statements; and
- h) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiff and other Aggrieved Employees

50. On September 16, 2022 and March 5, 2024, Plaintiff notified Defendant via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 49 (a)-(h). Attached collectively hereto as **Exhibit 1** are true and correct copies of the September 16, 2022 and March 5, 2024 letters to the LWDA.

Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

51. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

52. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

53. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff and members of the Wage Statement Class with accurate, itemized wage statements that included among other requirements, accurate total gross wages earned, total hours worked, gross and net wages earned, deductions, in violation of Labor Code § 226 *et seq.*

54. Defendants' failure to furnish Plaintiff and the members of the Wage Statement Class with complete and accurate, itemized wage statements resulted in actual injury, in violation of Labor Code § 226 *et seq.*

55. Defendants' failures created an entitlement to Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

57. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

58. Defendants failed to timely pay Plaintiff all of his final wages at the time of termination, which include, among other things, underpaid minimum wages. Further, Plaintiff is informed and believes, and based thereon allege, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the

1 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
2 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
3 *seq.*;

4 9. Upon the Sixth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
6 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
7 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
8 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
9 unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent
10 violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial
11 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
12 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent
13 violation per employee per pay period for those violations of the Labor Code for which no civil
14 penalty is specifically provided, based on the Labor Code violations cited in Paragraph 49 (a)-(f)
15 above.

16 10. Upon the Seventh Cause of Action, for statutory wage statement penalties pursuant
17 to Labor Code § 226 *et seq.*;

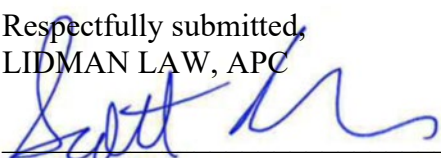
18 11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
19 Labor § 203;

20 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
21 Code § 218.6 and Civil Code §§ 3287 and 3289;

22 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
23 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

24 14. For such other and further relief the Court may deem just and proper.

25 Dated: May 9, 2024

26
27 By: 
28 Scott M. Lidman
Attorneys for Plaintiff
WILLIAM COLEMAN

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Dated: May 9, 2024

By:

Scott M. Lidman
Attorneys for Plaintiff
WILLIAM COLEMAN

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

March 5, 2024

VIA LWDA WEBSITE

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

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

ProEnergy Crafts, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Evaptech, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *William Coleman v. ProEnergy Crafts, Inc. and Evaptech, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents William Coleman in claims arising from his employment with ProEnergy Crafts, Inc., a Missouri corporation and Evaptech, Inc., a Maryland corporation (collectively, “Defendants”). Mr. Coleman is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below and in his prior correspondence to the Labor and Workforce Development Agency (“LWDA”) dated September 16, 2022 (the “LWDA Letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA Letter and is incorporated herein by reference. By this letter, Mr. Coleman hereby supplements his prior LWDA Letter. The purpose of the LWDA Letter and the instant supplement letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the LWDA of the specific provisions of the Labor Code allegedly violated.

The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Coleman intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendants’ all current and former non-exempt, hourly employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

By this letter, Mr. Coleman hereby supplements his prior LWDA Letter (**Exhibit A**) by asserting all of the same allegations and claims asserted in the original letter against Evaptech, Inc. Furthermore, Mr. Coleman further supplements his original letter by alleging that Defendants have also committed the additional Labor Code violations as asserted below.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Coleman and other Aggrieved Employees all of their final wages at the time of their separation of employment, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Coleman and other aggrieved employees was willful and, consequently, entitles Mr. Coleman and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

Labor Code § 226 - Wage Statement Violations

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Coleman and Defendants' current and former non-exempt employees.

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Coleman and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total rest and meal period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Coleman and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

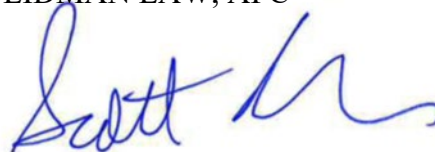
As an "aggrieved employee," Mr. Coleman will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein against Defendants as well as those set forth in his original letter (**Exhibit A**). Based on Mr. Coleman's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Coleman and other Aggrieved Employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Coleman and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Coleman and other Aggrieved Employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Coleman and other Aggrieved Employees;
- e) Defendants violated Labor Code § 204 by failing to pay Mr. Coleman and other Aggrieved Employees all earned wages at least twice during each calendar month; and
- f) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Coleman and other Aggrieved Employees;
- g) Defendants violated Labor Code § 226 by failing to furnish Mr. Coleman and other Aggrieved Employees with accurate and compliant itemized wage statements; and
- h) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Coleman and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman, Esq.

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

September 16, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

ProEnergy Crafts, Inc.

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Re: *William Coleman v. ProEnergy Crafts, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents William Coleman in claims arising from his employment with ProEnergy Crafts, Inc., a Missouri corporation (“Defendant”). Mr. Coleman is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Coleman intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s all current and former non-exempt, hourly employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Coleman was employed by Defendant as an hourly, non-exempt employee and assigned to work in California in 2020. During his employment with Defendant, Defendant directed Mr. Coleman to work at a power plant located in Middletown, California, where he was responsible for installing cooling towers, among other job duties.

Throughout Mr. Coleman’s employment with Defendant in California, Mr. Coleman was generally scheduled to work Monday through Friday from approximately 6:30 a.m. or 7:00 a.m. to approximately 5:00 p.m., and sometimes worked shifts of 12 or more hours. During at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman to record his actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time

actually worked by Mr. Coleman, and also failed to pay Mr. Coleman all required minimum wages. Further, because Mr. Coleman would often work more than eight (8) hours per day and/or forty (40) hours per week, Defendant's timekeeping policies and practices also deprived Mr. Coleman of overtime wages owed to him. Defendant's timekeeping policies and practices applied to Mr. Coleman and other non-exempt, hourly employees. As a result, Mr. Coleman and other non-exempt, hourly employees were deprived of all required minimum and overtime wages due.

Additionally, during his employment with Defendant in California, Mr. Coleman was not fully paid for all time worked due to Defendant's timekeeping policies and practices because Defendant would unlawfully shave Mr. Coleman's work time and/or round Mr. Coleman's work time such that Mr. Coleman would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and/or shave in Defendant's favor such that Mr. Coleman was routinely underpaid for his time worked, including minimum wages. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by the non-exempt, hourly employees, and also failed to pay Mr. Coleman and other non-exempt, hourly employees all required minimum wages. Further, Mr. Coleman and other non-exempt, hourly employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

While working for Defendant in California, Mr. Coleman routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Mr. Coleman received non-discretionary bonuses, per diems, and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Coleman and other non-exempt, hourly employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Coleman and other non-exempt, hourly employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Mr. Coleman and other non-exempt, hourly employees all required overtime wages.

During his employment with Defendant in California, Mr. Coleman was not provided all legally required meal periods due to Defendant's unlawful meal period policies and practices. Throughout his employment with Defendant in California, Mr. Coleman was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide timely uninterrupted, duty-free and timely 30-minute meal periods. In addition, Defendant failed to maintain policies and practices requiring employees to record the start and stop times for meal periods, in violation of California law. As a result of Defendant's unlawful meal period policies and practices, Mr. Coleman and other non-exempt, hourly employees' meal periods were often late or otherwise unlawful. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant's meal period policies and practices failed to provide Mr.

Coleman and other non-exempt, hourly employees with a second, timely meal period of at least 30 minutes in length.

Although Mr. Coleman and other non-exempt, hourly employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Coleman with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their hourly, non-exempt employees.

Mr. Coleman was also not authorized and permitted to take all legally required paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Mr. Coleman worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant failed to authorize or permit a third ten-minute paid rest period. Accordingly, Defendant's rest period policies and practices fail to authorize and permit Mr. Coleman and other non-exempt, hourly employees to take duty-free 10-minute rest periods for every four hours worked, or *major fraction thereof*.

On those occasions when Mr. Coleman other non-exempt, hourly employees were not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant's policies and practices failed to compensate them with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for paying rest period premiums when Defendant failed to provide a legally compliant rest period.

As a result of Defendant's failure to pay all minimum and overtime wages, as well failure to pay all meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Coleman and other hourly, non-exempt employees.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Overtime Violations

Defendant was required to pay Mr. Coleman and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh

day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked.” During at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman and other Aggrieved Employees to record his actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Coleman and other Aggrieved Employees. Because Mr. Coleman would often work more than eight (8) hours per day and/or forty (40) hours per week, Defendant’s timekeeping policies and practices also deprived Mr. Coleman and other Aggrieved Employees of overtime wages owed to them. As described above, Mr. Coleman received non-discretionary bonuses, per diems, and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (“Incentive Pay”). Despite Defendant’s payment of Incentive Pay to Mr. Coleman and other Aggrieved Employees, Defendant’s policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Coleman and other Aggrieved Employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Mr. Coleman and other Aggrieved Employees all required overtime wages.

Minimum Wage Violations

Defendant was required to pay Mr. Coleman and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; Wage Order 4, § 4. Mr. Coleman and other aggrieved employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, during at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman and other Aggrieved Employees to record their actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Coleman and other Aggrieved Employees, and also failed to pay Mr. Coleman and other Aggrieved Employees all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Coleman and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. Throughout his employment with Defendant in California, Mr.

Coleman was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide timely uninterrupted, duty-free and timely 30-minute meal periods. In addition, Defendant failed to maintain policies and practices requiring employees to record the start and stop times for meal periods, in violation of California law. As a result of Defendant's unlawful meal period policies and practices, Mr. Coleman and other Aggrieved Employees' meal periods were often late or otherwise unlawful. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant's policies and procedures failed to provide Mr. Coleman and other Aggrieved Employees with a second, timely meal period of at least 30 minutes in length. Therefore, Mr. Coleman and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Coleman and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Coleman and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Coleman and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, Mr. Coleman worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant failed to authorize or permit a third ten-minute paid rest period. Accordingly, Defendant's rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, or *major fraction thereof*. As a result, Mr. Coleman and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

As an "aggrieved employee," Mr. Coleman will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Coleman's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Coleman and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Coleman and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Coleman and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Coleman and other Aggrieved Employees;
- e) Defendant violated Labor Code § 204 by failing to pay Mr. Coleman and other Aggrieved Employees all earned wages at least twice during each calendar month; and
- f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Coleman and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Elizabeth Nguyen, Esq.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, CA 90245.

On May 9, 2024 I served the foregoing document(s) described as:

1. FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Nicole R. Roysdon, Esq.
NRoysdon@wilsonturnerkosmo.com
Brian G. Lee, Esq.
BLee@wilsonturnerkosmo.com
Julie DeVercelly
jdevercelly@wilsonturnerkosmo.com
Cassidee M. Torres
CTorres@wilsonturnerkosmo.com
WILSON TURNER KOSMO LLP
402 West Broadway, Suite 1600
San Diego, California 92101 *Attorneys for*
Defendant, PROENERGY CRAFTS, INC.

Ian B. Wieland, Esq.
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mehgan@sw2law.com
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Attorneys for Defendant, EVAPTECH, INC.

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based upon an agreement by counsel for electronic service, I caused the above-listed documents to be served upon the persons listed via e-mail or electronic transmission to their respective e-mail addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 9, 2024, at El Segundo, California.


Marlyn Ajanel