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Attorneys for Plaintiff JASON ODELL WRIGHT,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

JASON ODELL WRIGHT, individually
and on behalf of himself and all others
similarly situated,

Plaintiff,

v.

COMPUCOM SYSTEMS, INC.,
a Delaware Corporation; EXCELL,
a division of CompuCom Systems, Inc.;
and DOES 1-50, inclusive,

Defendants.

Case No. **CVRI 22051 36**

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay Minimum Wages;**
- 2) Failure to Pay Overtime Owed;**
- 3) Failure To Provide Lawful Meal Periods;**
- 4) Failure To Authorize And Permit Rest Periods;**
- 5) Failure to Timely Pay Wages During Employment**
- 6) Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) Failure to Reimburse Necessary Expenses;**
- 8) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 9) Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JASON ODELL WRIGHT (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against Defendants COMPUCOM SYSTEMS, INC., a Delaware Corporation; EXCELL, a division of CompuCom Systems, Inc.; and DOES 1-50, inclusive (collectively “Defendants” or “CompuCom”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants, either directly or indirectly, at facilities in the State of California at any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9) through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiff and Class Members all of their wages, including overtime and premium wages.

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1 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
2 Procedure, the California Civil Code, and the California Business and Professions Code.

3 11. Venue is proper in this Court because one or more of the Defendants reside, transact
4 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
5 omissions alleged herein took place in this County.

6 **PARTIES**

7 12. Defendant CompuCom Systems, Inc. is a Delaware corporation, doing business in
8 the state of California. It is based at 8106 Calvin Hall Road, Fort Mill, SC 29707.

9 13. Upon information and belief, CompuCom Systems, Inc. employs Non-Exempt
10 Employees, like Plaintiff, throughout the State of California.

11 14. Defendant eXcell is a division of CompuCom Systems, Inc., doing business in the
12 state of California. It is based at 2018 156th Ave. NE, Bellevue, Washington 98007.

13 15. Upon information and belief, eXcell employs Non-Exempt Employees, like
14 Plaintiff, throughout the State of California.

15 16. Plaintiff Jason Odell Wright is and during the liability period has been, a resident of
16 California.

17 17. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
18 relevant time period.

19 18. Plaintiff and the members of the putative class were employed as hourly paid
20 employees by employed by Defendants, either directly or indirectly, at facilities in the State of
21 California at any time from four years prior to the filing of this Complaint (as tolled by Emergency
22 Rule 9).

23 19. Whenever in this complaint reference is made to any act, deed, or conduct of
24 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
25 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
26 actively engaged in the management, direction, control, or transaction of the ordinary business and
27 affairs of Defendants.

28 20. The true names and capacities of Defendants, whether individual, corporate,

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
3 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

5 21. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
6 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
7 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
8 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
9 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
10 liability of the Defendants as alleged herein.

11 22. Plaintiff is further informed and believes, and thereon allege, that at all times
12 material herein, each Defendant was completely dominated and controlled by its co-Defendants
13 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
14 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
15 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
16 Whenever and wherever reference is made to individuals who are not named as Defendants in this
17 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
18 acted on behalf of Defendants named in this complaint within the scope of their respective
19 employments.

20 **FACTUAL ALLEGATIONS**

21 23. During the relevant time frame, Defendants compensated Plaintiff and the Non-
22 Exempt Employees based upon an hourly wage.

23 24. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
24 non-exempt employees within the meaning of the California Labor Code, and the implementing
25 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
26 the IWC Wage Orders and the Labor Code.

27 25. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-
28 exempt position. He worked as a Level 4 SDI Technician in Defendants' facilities approximately

1 5 days per week, 40+ hours per week.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
4 requirements of California's wage and employment laws.

5 27. All Class Members are similarly situated in that they are all subject to Defendants'
6 uniform policies and systemic practices as specified herein.

7 28. Plaintiff and the Class Members were required to clock in at the beginning of their
8 shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.
9 However, Plaintiff and the Class Members were not paid for all hours worked because employees
10 were required to work off the clock. By way of example only, Plaintiff and the Class Members
11 were required to go through COVID-19 screenings prior to starting their shifts

12 29. Upon information and belief, Defendants failed to incorporate all forms of non-
13 discretionary compensation into the regular rate, including differentials, bonuses, and incentives.

14 30. Plaintiff and the Class Members were regularly required to work shifts in excess of
15 five hours without being provided a lawful meal period.

16 31. Indeed, during the relevant time, as a consequence of Defendants' scheduling
17 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
18 provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
19 periods as required by law.

20 32. Despite the above-mentioned meal period violations, Defendants failed to
21 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
22 additional hour of pay at their regular rate as required by California law when meal periods were
23 not timely or lawfully provided in a compliant manner.

24 33. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
25 should know, knew, and/or should have known that Plaintiff and the other Class Members were
26 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
27 accurately calculated compensation.

28 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
and IWC wage order.

1 35. Plaintiff and the Class Members were required to engage in work related activities
2 during meal and rest periods. Meal and rest periods were frequently interrupted as a consequence.

3 36. Defendants maintained and enforced scheduling practices, policies, and imposed
4 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
5 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
6 requisite rest periods were not timely authorized and permitted.

7 37. Further, Plaintiff and, upon information and belief, the Class Members were not
8 allowed to leave the premises during meal and rest periods.

9 38. Despite the above-mentioned rest period violations, Defendants did not compensate
10 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
11 their regular rate as required by California law, including Labor Code section 226.7 and the
12 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
13 permitted.

14 39. Plaintiff and the Class Members were also required to use their personal cellular
15 phones for work related purposes throughout the working day and off the clock.

16 40. Moreover, Plaintiff and the Class Members were required to incur necessary
17 expenses in the discharge of their duties, including without limitation for cell phone expenses, home
18 computers, internet, and mileage, but were not reimbursed for such necessary expenses.

19 41. Defendants also failed to provide accurate, lawful itemized wage statements to
20 Plaintiff and the Class Members in part because of the above specified violations.

21 42. Defendants have also made it difficult to determine applicable rates of pay and
22 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
23 exempt Employees, including Plaintiff, during the liability period because they did not implement
24 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
25 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
26 211(c), California Labor Code section 226, and applicable California Wage Orders.

27 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
thereof for resignations without prior notice as the case may be) they had a duty to accurately

1 compensate Plaintiff and Class Members for all wages owed including straight time, overtime, meal
2 and rest period premiums, and that Defendants had the financial ability to pay such compensation,
3 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
4 above-specified violations.

5 44. Plaintiff and the Class Members are covered by applicable California IWC Wage
6 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
7 section 11000 *et seq.*

8 **CLASS ACTION ALLEGATIONS**

9 45. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
10 other person similarly situated, and thus, seeks class certification under California Code of Civil
11 Procedure §382.

12 46. All claims alleged herein arise under California law for which Plaintiff seeks relief
13 as authorized by California law.

14 47. The proposed class is comprised of and defined as: **all persons who are or were**
15 **employed by the Defendants as hourly paid, non-exempt workers at facilities in the State of**
16 **California at any time from four years prior to the filing of this action¹ through resolution or**
17 **trial of the matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

18 48. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
19 are composed of Class Members satisfying the following definitions:

20 a. All Class Members who were not paid at least minimum wage for all hours
21 worked (collectively “**Minimum Wage Subclass**”);

22 b. All Class Members who were not accurately paid overtime for hours worked
23 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

24 c. All Class Members who worked more than five (5) hours in a workday and
25 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
26 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
27 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

28 ¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

1 d. All Class Members who worked more than three and a half hours in a
2 workday and were not authorized and permitted to take a net 10-minute rest period for every four
3 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
4 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
5 as the "**Rest Period Subclass**");

6 e. All Class Members who were not reimbursed for all necessary expenditures
7 (collectively "**Indemnification Subclass**");

8 f. All Class Members who did not receive all owed wages at time of separation
9 or within 72 hours in the case of resignation (hereinafter collectively referred to as the "**Waiting**
10 **Time Subclass**");

11 g. All Class Members who were not provided with accurate and complete
12 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
13 **Subclass**");

14 h. All Class Members who were employed by Defendants and subject to
15 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
16 **Practices Subclass**").

17 49. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
18 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
19 or if it should be deemed necessary by the Court or to further divide the Class Members into
20 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
21 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

22 50. As set forth in further detail below, this action has been brought and may properly
23 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
24 because there is a well-defined community of interest in the litigation, and the proposed Class and
25 Subclasses are easily ascertainable through Defendants' records.

26 a. Numerosity: The members of the Class and Subclasses are so numerous that
27 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
28 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the

1 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
2 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants'
3 employment records would provide information as to the number and location of all Class
4 Members. Joinder of all members of the proposed Class is not practicable.

5 b. The proposed class is easily ascertainable. The number and identity of the
6 class members are determinable from Defendants' payroll records and time records for each class
7 member.

8 c. Commonality: There are common questions of law and fact as to the Class
9 and Subclasses that predominate over questions affecting only individual Class Members. These
10 common questions of law and fact include, without limitation:

- 11 1. Whether Defendants accurately paid Class Members for all hours worked;
- 12 2. Whether Defendants knew or should have known that Class Members were
13 required to perform work off the clock;
- 14 3. Whether Defendants accurately calculated and paid all Class Members
15 overtime premiums for the hours which Plaintiff and Class Members worked
16 in excess of eight (8) hours per day and/or forty (40) hours per week;
- 17 5. Whether Defendants had a policy and practice of providing lawful, timely
18 meal periods in accordance with Labor Code § 512, as well as the applicable
19 Industrial Welfare Commission ("IWC") wage order;
- 20 6. Whether Defendants had a policy and practice of complying with Labor
21 Code section 226.7 and IWC Wage Order on each instance that a lawful,
22 timely 30-minute uninterrupted meal period was not provided;
- 23 7. Whether Defendants failed to authorize and permit a lawful, net 10-minute
24 rest period to the Class Members for every four (4) hours or major fraction
25 thereof worked;
- 26 8. Whether Defendants had a policy and practice of complying with Labor
27 Code section 226.7 and the IWC Wage Order on each instance that a lawful
28 rest period was not provided;

9. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
10. Whether Defendants failed to reimburse employees for necessary expenses in accordance with Labor Code section 2802;
11. Whether Defendants omitted required information from itemized wage statements;
12. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;
13. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
14. Whether Defendants' conduct was willful and/or reckless;
15. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and
16. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the interests of each member of the Class and Subclasses with whom he has a well-defined community of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief which would be sought by each member of the Class and/or Subclasses in separate actions. All members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate wage statements, failure to timely pay wages at termination, failure to pay minimum wages, and failure to accurately pay all wages earned including all owed premium and overtime wages, all due to Defendants' policies and practices that affected each member of the Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the

1 interests of each member of the Class and/or Subclasses with whom he has a well-defined
2 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
3 he has an obligation to make known to the Court any relationships, conflicts, or differences with
4 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
5 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
6 versed in the rules governing class action discovery, certification, litigation, and settlement and
7 experienced in handling such matters. Other former and current employees of Defendants may also
8 serve as representatives of the Class and Subclasses if needed.

9 f. Superiority: The nature of this action makes the use of class action
10 adjudication superior to other methods. A class action will achieve economies of time, effort,
11 judicial resources, and expense, which would not be achieved with separate lawsuits. The
12 prosecution of separate actions by individual members of the Class and/or Subclasses would create
13 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
14 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
15 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
16 disposition of their interests through actions to which they were not parties. Thus, a class action is
17 superior to other available means for the fair and efficient adjudication of this controversy because
18 individual joinder of all Class Members is not practicable, and questions of law and fact common
19 to the Class predominate over any questions affecting only individual Class Members. Each
20 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
21 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
22 Class action treatment will allow those similarly situated persons to litigate their claims in the
23 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
24 unaware of any difficulties that are likely to be encountered in the management of this action that
25 would preclude its maintenance as a class action.

26 g. Public Policy Considerations: Employers in the state of California violate
27 employment and labor laws every day. However, current employees are often afraid to assert their
28 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions

1 because they believe their former employers may damage their future endeavors through negative
2 references and/or other means. The nature of this action allows for the protection of current and
3 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
4 California have a significant interest in ensuring employers comply with California's labor laws
5 and in ensuring those employers who do not are prevented from taking further advantage of their
6 employees.

7 **CLASS ACTION CLAIMS**

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(By Plaintiff and the Class Against All Defendants)**

11 51. Plaintiff incorporates each and every allegation set forth in all of the foregoing
12 paragraphs as if fully set forth herein.

13 52. Labor Code section 204 establishes the fundamental right of all employees in the
14 State of California to be paid wages, including minimum wage, straight time and overtime, in a
15 timely fashion for their work.

16 53. Labor Code section 1194(a) provides that notwithstanding any agreement to work
17 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
19 of the full amount of this minimum wage or overtime compensation, including interest thereon,
20 reasonable attorney's fees, and costs of suit.

21 54. Labor Code section 1197 provides: The minimum wage for employees fixed by the
22 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
23 and the payment of a lower wage than the minimum so fixed is unlawful.

24 55. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
25 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
26 Wage Order(s).

27 56. The applicable wage orders and California Labor Code sections 1197 and 1182.12
28 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by

1 state law.

2 57. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
3 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
4 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
5 equal to the unpaid wages and interest accrued thereon.

6 58. During all relevant periods, the California Labor Code and wage orders required that
7 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
8 hours worked.

9 59. The IWC Wage Orders define "hours worked" as "the time during which an
10 employee is subject to the control of an employer, and includes all the time the employee is suffered
11 or permitted to work, whether or not required to do so."

12 60. At all times relevant, Plaintiff and Class Members consistently worked hours for
13 which they were not paid because Defendants frequently required Plaintiff and the Class Members
14 to work off the clock, including but not limited to COVID-19 screenings.

15 61. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
16 Class Members were working off the clock and that they should have been paid for this time.

17 62. Defendant's policy and practice of not paying all minimum wages violates
18 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
19 applicable wage order 5-2001.

20 63. Due to Defendants' violations of the California Labor Code and wage orders,
21 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
22 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
23 judgment and post-judgment interest, as well as liquidated damages.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME OWED

(By Plaintiff and the Class Against All Defendants)

64. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

65. During all relevant periods, Defendant required Plaintiff and the Class members to work shifts and/or remain on call in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

66. During all relevant periods, both the California Labor Code sections 1194, 1197, 510, 1198, and the pertinent wage order 5-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to 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 (8) hours on any seventh (7th) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

67. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff and the Class members to work and/or remain on call in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay.

68. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

69. At all times relevant, Plaintiff and Class Members consistently worked hours for which they were not paid because Plaintiff and the Class Members were required to work off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40) hours in a workweek and should have been paid at the overtime rate.

70. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the

1 Class Members were working off the clock and that they should have been paid for this time.

2 71. In addition, upon information and belief, Defendants failed to incorporate all forms
3 of compensation, including without limitation bonuses, differentials, and incentives, into the
4 regular rate for overtime purposes.

5 72. As a result, Defendants failed to pay Plaintiff and the Class members earned
6 overtime wages and such employees suffered damages as a result.

7 73. Defendants knew or should have known Plaintiff and the Class Members were
8 undercompensated as a result of these practices.

9 74. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class
10 members are entitled to recover from Defendants their unpaid overtime wages, reasonable
11 attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory
12 penalties, and liquidated damages.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

16 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

17 75. Plaintiff incorporates by reference and realleges each and every allegation contained
18 above, as though fully set forth herein.

19 76. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
20 period of more than five (5) hours without providing a meal break of not less than thirty (30)
21 minutes in which the employee is relieved of all of his or her duties, except that when a work period
22 of not more than six (6) hours will complete the day's work the meal period may be waived by
23 mutual consent of the employer and employee.

24 77. For the four (4) years preceding the filing of this lawsuit as properly tolled by
25 Emergency Rule 9, Defendants failed to provide Plaintiff and Class Members timely and
26 uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a
27 shift.

28 78. As a consequence of Defendants' policies and practices, requirements, demands,

1 coverage and staffing, Plaintiff and the Class Members were often required to forego such meal
2 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
3 sixth hour of their shifts.

4 79. Further, Plaintiff and, upon information and belief, the Class Members were not
5 allowed to leave the premises during meal periods.

6 80. Upon information and belief, Plaintiff and the Class Members were not paid one
7 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

8 81. As a proximate result of the aforementioned violations, Plaintiff and the Class
9 Members have been damaged in an amount according to proof at time of trial.

10 82. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
11 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
12 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

13 83. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
14 represent have been deprived of premium wages in amounts to be determined at trial, and are
15 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
16 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
17 section 3287.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

20 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

21 84. Plaintiff incorporates by reference and realleges each and every allegation contained
22 above, as though fully set forth herein.

23 85. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
24 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
25 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
26 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
27 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
28 be counted as hours worked, for which there shall be no deduction from wages."

1 86. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
2 during any rest period mandated by an applicable order of the IWC.

3 87. Defendants were required to authorize and permit employees such as Plaintiff and
4 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
5 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
6 with no deduction from wages.

7 88. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
8 Member's employment with Defendants, Defendants failed and refused to authorize and permit
9 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
10 worked, or major fraction thereof. Such rest breaks, when provided, were frequently untimely or
11 less than net ten minutes because of the work requirements imposed by Defendants.

12 89. Further, Plaintiff and, upon information and belief, the Class Members were not
13 allowed to leave the premises during rest periods.

14 90. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay
15 for each day that a rest period violation occurred. On information and belief, the other members of
16 the Class endured similar violations as a result of Defendants' rest period policies and practices and
17 Defendant did not pay said Class Members premium pay as required by law.

18 91. By their failure to authorize and permit Plaintiff and the Class Members to take a
19 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
20 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
21 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
22 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
23 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
24 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

25 92. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to
26 represent have been deprived of premium wages in amounts to be determined at trial, and are
27 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
28 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FIFTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING
EMPLOYMENT

(By Plaintiff and the Class Against All Defendants)

93. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

94. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

95. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

96. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

97. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

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106. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

107. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

108. Plaintiff and the members of the Indemnification Class were required to incur expenses in the performance of their assigned job duties, including but not limited to personal cell phone expenses, milage costs and use of personal computers and home internet

109. Upon information and belief, the Defendants did not reimburse Plaintiff or the Plaintiff's subclass for such expenses.

110. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff's Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

EIGHTH CAUSE OF ACTION

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

By Plaintiff and Wage Statement Subclass Against Defendants

111. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

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

1 and the corresponding number of hours worked at each hourly rate by the employee....”.

2 113. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
3 accurate information with respect to each employee including the following: (3) Time records
4 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
5 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
6 and applicable rates of pay....”

7 114. Labor Code section 1174 of the California also requires Defendants to maintain and
8 preserve, in a centralized location, among other items, records showing the names and addresses of
9 all employees employed and payroll records showing the hours worked daily by, and the wages
10 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
11 and intentionally failed to comply with Labor Code section 1174, including by implementing the
12 policies and procedures and committing the violations alleged in the preceding causes of action and
13 herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
14 Code section 1175.

15 115. Defendants have failed to record many of the items delineated in applicable
16 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
17 including by virtue of the fact that each wage statement which failed to accurately compensate
18 Plaintiff and Class Members for all hours worked and for missed and non-provided meal and rest
19 periods, or which failed to include compensation for all minimum wages earned or overtime hours
20 worked, was an inaccurate wage statement. In addition, the wage statements inaccurately stated
21 totals hours worked and hours worked at each hourly wage rate.

22 116. On information and belief, Defendants failed to implement and preserve a lawful
23 record-keeping method to record all non-provided meal and rest periods owed to employees or all
24 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
25 and applicable California Wage Orders. In order to determine if they had been paid the correct
26 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
27 and are compelled to try to discover the required information missing from their wage statements
28 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage

1 statements Defendants provided to them.

2 117. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
3 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
4 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
5 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
6 accurately include all applicable hourly rates on the wage statements and the corresponding number
7 of hours worked at such rates or hours paid at such rates. In addition, Defendants have failed to
8 provide accurate itemized wage statements as a consequence of the above-specified violations for
9 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
10 meal and rest period premiums as required by law.

11 118. Moreover, upon information and belief, as a pattern and practice, in violation of
12 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
13 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
14 Statement Class, including but not limited to, beginning and ending of each work period, meal
15 period and split shift interval, the total daily hours worked, and the total hours worked per pay
16 period and applicable rates of pay.

17 119. Plaintiff and the members of the Wage Statement Class have suffered injury as a
18 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
19 Class in that the members of the Wage Statement Class were not timely provided written accurate
20 itemized statements showing all requisite information, such that the members of the Wage
21 Statement Class were misled by Defendants as to the correct information regarding various items,
22 including but not limited to total hours worked by the employee, net wages earned and all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate.

25 120. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed
26 above, Plaintiff and the Wage Statement Class Members are each entitled to recover up to a
27 maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

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NINTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW

By Plaintiff and Class Against All Defendants

121. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

122. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff also seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

123. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§ 17200, *et seq.*

124. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

125. The state law violations, including violations of the relevant IWC Wage Order, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to fully and accurately compensate Plaintiff and the Class Members for all hours worked, including minimum wages and overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate itemized wage statement as specified above.

126. Plaintiff and the Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

127. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff and the Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of

attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

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1 **On the Seventh Cause of Action**

2 **(Failure to Reimburse Necessary Expenses)**

- 3 1. For unreimbursed sums;
- 4 2. For reasonable attorneys' fees and costs pursuant to statute;
- 5 3. For interest; and
- 6 4. For such other and further relief as the Court deems proper.

7

8 **On the Eighth Cause of Action**

9 **(Failure to Provide Accurate Itemized Wage Statements)**

- 10 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
- 11 2. For reasonable attorneys' fees and costs; and
- 12 3. For such other and further relief as the Court deems proper;

13 **On the Ninth Cause of Action**

14 **(Violation of the Unfair Competition Law)**

- 15 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
- 16 sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum, overtime
- 17 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium
- 18 wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last
- 19 four (4) years in an amount according to proof;
- 20 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
- 21 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,
- 22 1198 ;
- 23 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due
- 24 from the day that such amounts were due;
- 25 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
- 26 recover under the Labor Code; and
- 27 5. For such other and further relief as the Court deems proper.
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Respectfully submitted,


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for JASON ODELL WRIGHT, on behalf of
himself and all others similarly situated