

GREGORY P. WONG (SBN: 204502)
HEATHER K. COX (SBN: 278898)
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, CA 90230
Telephone: (323) 450-2777
Email: heather@barklawfirm.com

**Attorneys for Plaintiff Ramon Lopez, on behalf of
himself and all others similarly situated**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE CIVIL COMPLEX CENTER

RAMON LOPEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

NEXGEN AIR CONDITIONING AND
HEATING, LLC, a California Limited Liability
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2022-01295800-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages (California Labor Code Sections 1194(a) and 1197);
2. Failure to Pay Overtime Wages (California Labor Code Sections 510, 1194(a), and 1198);
3. Failure to Provide Accurate, Itemized Wage Statements (California Labor Code Section 226(a));
4. Failure to Provide Meal Periods (California Labor Code Sections 226.7 and 512(a));
5. Failure to Provide Rest Breaks (Cal. Labor Code Section 226.7)
6. Waiting Time Penalties (California Labor Code Section 203);
7. Failure to Maintain Records (California Labor Code Section 1174(d));
8. Failure to Reimburse Business Expenses (California Labor Code Section 2802);

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9. Unfair Business Practice (CA Business & Professions Code Section 17200, et seq.); and

10. Violation of Labor Code §§ 2698-2699 (“Private Attorney’s General Act)

[UNLIMITED CIVIL]

[JURY TRIAL DEMANDED]

1 Plaintiff Ramon Lopez (hereinafter “Plaintiff” or “Plaintiff ”), on behalf of himself and all
2 others similarly situated, alleges and states as follows:

3 **JURISDICTION AND VENUE**

4 1. This class action is brought pursuant to California Code of Civil Procedure section
5 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction
6 limits of the Superior Court and will be established according to proof at trial. The amount in
7 controversy for each class representative, including claims for compensatory damages and pro rata
8 share of attorneys’ fees is less than \$75,000.00. It is believed that the total sum owed to the Class
9 alleged herein is less than \$5,000,000.00, based upon the anticipated size of the Class and the
10 amount in controversy for each member of the Class.

11 2. This Court has jurisdiction over this action and the matters alleged herein pursuant
12 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.
13 The statutes under which this action is brought do not specify any other basis for jurisdiction.

14 3. This Court has jurisdiction over Defendant, because, upon information and belief,
15 Defendant is either a citizen of California, has sufficient minimum contacts in California, or
16 otherwise intentionally avails itself of the California market so as to render the exercise of
17 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
18 justice.

19 4. Venue is proper in this Court, because, upon information and belief, the named
20 Defendant resides, transacts business, or has offices in this county, and the acts or omissions alleged
21 herein took place in this county.

22 5. On December 9, 2022, Plaintiffs provided notice to the California Labor and
23 Workforce Development Agency (“LWDA”) of his intent to file a lawsuit against Defendants
24 pursuant to the Private Attorneys General Act for violations of Labor Code sections 201, 202, 203,
25 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198 and 2802 and the applicable
26 industrial wage orders. This matter has been assigned case number LWDA-CM-923620-22 by the
27 LWDA. As of the date of filing of this First Amended Complaint, the LWDA has not provided any
28 notice that it intends to investigate the alleged violations. Accordingly, upon stipulation of the

1 parties and with leave from the Court, Plaintiffs now file this First Amended Complaint pursuant
2 to California Labor Code section 2699.3(c), which authorizes a plaintiff to amend an existing civil
3 complaint within 60 days of the relevant event giving rise to a complaining employee's right to
4 proceed in a civil action brought under the California Private Attorneys General Act (California
5 Labor Code section 2698, et seq.).

6 **THE PARTIES**

7 6. At all times relevant herein, Plaintiff was, and is, an individual residing in the City
8 of Anaheim, County of Orange, State of California.

9 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 relevant herein, Defendant NexGen Air Conditioning and Heating, LLC (hereinafter "Defendant"),
11 was, and is, a California Corporation with principal place of business in Anaheim, California that,
12 according to its Statement of Information filed with the State of California Office of the Secretary
13 of State, engages in the business of "Air Conditioning and Heating Install and Services."

14 8. Plaintiff is unaware of the true names and capacities of Defendants named herein as
15 DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
16 Plaintiff will amend this Complaint to allege such names and capacities when the same has been
17 ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the
18 fictitiously named Defendants stated herein bears a legal responsibility to Plaintiff similar to that
19 of the named Defendant herein.

20 9. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were the
21 agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged were
22 acting in the scope of their authority as such agents, servants, and employees, and with the
23 permission and consent of their Co-Defendants.

24 10. Plaintiff hereby demands a trial by jury.

25 **FACTS COMMON TO ALL CAUSES OF ACTION**

26 11. Plaintiff worked for Defendant during the relevant time period worked as an
27 Installer. Plaintiff's job duties encompassed customer service, sales, and installation tasks.
28 Throughout his employment, Plaintiff was classified by Defendant as a non-exempt employee.

1 12. During all times relevant to this action, Defendant maintained uniform timekeeping,
2 scheduling, break, and payroll processes and procedures for all of its non-exempt employees.
3 Plaintiff is informed and believes, and based thereon alleges, that Defendant also maintained
4 uniform work rules and procedures for all of its non-exempt employees.

5 13. At all times relevant to this action, Defendant failed to provide Plaintiff and the
6 Members of the Class with all mandatory meal periods and/or rest breaks. Plaintiff is further
7 informed and believes, and based thereon alleges, that Defendant did not compensate separately
8 compensate non-exempt employees paid on a commissions-only basis for paid rest breaks. Plaintiff
9 is informed and believes, and based thereon alleges, that Defendant did not pay hourly non-exempt
10 employees one (1) hour of wages for every meal and/or rest period that was not provided or
11 permitted by the Company.

12 14. At all times relevant to this action, Plaintiff received an earnings statement with each
13 of his pay checks. These earning statements, however, did not accurately reflect the hours worked
14 during the pay period, did not reflect meal period or rest break violations or premium payments
15 owed for failure to provide meal period or rest breaks, did not set forth the correct hourly rates of
16 pay, and did not provide information necessary for Plaintiff to confirm that he received payment of
17 all wages owed. Plaintiff is informed and believes that all truck drivers in California received wage
18 statements that lacked these mandatory categories of information.

19 15. At all times Plaintiff and the members of the class were required to utilize their
20 personal mobile devices and tools for work purposes without being offered or provided with
21 reimbursement for such business expenses reasonably incurred in the course and scope of
22 employment. Plaintiff and members of the class were provided with a gas card to pay for fuel, but
23 the gas cards had a purchase limit and Plaintiff and other members of the class were not reimbursed
24 for fuel expenses incurred by them in excess of the gas card purchase limit.

25 16. Plaintiff is informed and believes, and based thereon alleges, that at all times relevant
26 to this action, Defendant implemented a series of willful, systematic, and deliberate policies and
27 practices that suppressed operating costs at the expense of employee rights set forth under the
28 California Labor Code and the Industrial Welfare Commission (hereinafter "IWC") Wage Orders.

17. Defendant's unlawful conduct includes, but is not limited to:

(a) Failing to pay employees for all hours worked at either their regular rate of pay or the applicable minimum wage;

(b) Failing to pay mandatory overtime and/or double time wages;

(c) Failing to provide employees with mandatory meal periods and rest breaks;

(d) Failing to pay one (1) hour of wages to employees who are not provided with legally compliant meal periods and rest breaks;

(e) Failing to provide employees with accurate and complete wage statements;

(f) Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of all hours worked;

(g) Failing to reimburse employees for business expenses.

18. Plaintiff is informed and believes, and based thereon alleges, that, during the relevant period, Defendant's conduct resulted in systematic and class-wide violations of California Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194(a), 1197, 1197.1, 1198, and 2802.

CLASS ALLEGATIONS

19. Plaintiff brings this action individually, as well as on behalf of each and all persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure Section 382.

20. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized under California law.

21. Plaintiff seeks to represent a class of all of Defendant's current and former non-exempt employees, who fall into any of the following sub-classes composed of and defined as follows:

(a) **Unpaid Wages (Minimum Wage) Sub-Class:** All current and former employees who worked for Defendant in the State of California at any time during the period commencing four (4) years prior to the filing of this Complaint until the date Notice of Class Certification is mailed and were not paid at least the applicable minimum wage for all hours

1 worked;

2 (b) **Unpaid Wages (Overtime/Double Time) Sub-class:** All current and
3 former employees who worked for Defendant in the State of California at any time during the period
4 commencing four (4) years prior to the filing of this Complaint until the date Notice of Class
5 Certification is mailed and were not paid all overtime and/or double time wages earned;

6 (c) **Waiting Time Sub-class:** All former employees who worked for Defendant
7 in the State of California and were involuntarily or voluntarily terminated during the period
8 commencing three (3) years prior to the filing of this Complaint until the date Notice of Class
9 Certification is mailed and were not paid all wages owed at the time of termination as required
10 pursuant to California Labor Code section 201-203.

11 (d) **Wage Statement Sub-class:** All current and former employees who worked
12 for Defendant in the State of California during the period commencing one (1) year prior to the
13 filing of this Complaint until the date Notice of Class Certification is mailed and were not furnished
14 accurate, itemized wage statements as required by California Labor Code section 226(a);

15 (e) **Meal Period Sub-class:** All current and former employees who worked for
16 Defendant in the State of California at any time during the period commencing four (4) years prior
17 to the filing of this Complaint until the date Notice of Class Certification is mailed and were not
18 provided legally compliant initial meal periods for a work period of five (5) or more hours and/or
19 subsequent meal periods for a work period of ten (10) or more hours;

20 (f) **Rest Break Sub-class:** All current and former employees who worked for
21 Defendant in the State of California at any time during the period commencing four (4) years prior
22 to the filing of this Complaint until the date Notice of Class Certification is mailed and were not
23 authorized and permitted to take all legally required rest breaks or were not separately compensated
24 for paid rest breaks during pay periods in which they were classified as commissions-only
25 employees;

26 (g) **Failure to Maintain Payroll Records Sub-class:** All current and former
27 employees who worked for Defendant during the period commencing one (1) year prior to the filing
28 of this Complaint until the date Notice of Class Certification is mailed and for whom Defendant

1 failed to maintain full, complete, and accurate payroll records as required by California Labor Code
2 section 1174(d);

3 (h) **Reimbursement Sub-class:** All current and former non-exempt employees
4 who worked for Defendant in the State of California at any time during the period commencing
5 four (4) years prior to the filing of this Complaint until the date Notice of Class Certification is
6 mailed and did not receive reimbursement for all necessary expenditures or losses incurred in direct
7 consequence of the discharge of their duties as required by California Labor Code section 2802;

8 (i) **UCL Sub-class:** All current and former employees, who worked for
9 Defendant in the State of California at any time during the period commencing four (4) years prior
10 to the filing of this Complaint until the date Notice of Class Certification is mailed and are entitled
11 to restitution for Defendant's unlawful business practices, including, but not limited to, failure to
12 pay all wages earned, failure to pay minimum wages, failure to pay overtime and/or double time
13 wages, failure to provide lawful meal periods, failure to authorize and permit lawful rest breaks,
14 and failure to reimburse for all business expenditures incurred by employees in direct consequence
15 of the discharge of their duties.

16 22. The members of the proposed Class and Sub-classes, and each of them, are so
17 numerous that joinder of all members would be unfeasible and not practicable. The membership
18 of the entire Class is unknown to Plaintiff at this time, however, the class is estimated to be greater
19 than one hundred (100) individuals and the identity of the class membership is readily ascertainable
20 by inspection of Defendant's payroll and personnel records.

21 23. Plaintiff has been, at all material times, a member of the Class and each Sub-Class.
22 Plaintiff is qualified to, and will, fairly and adequately represent the interests of each class member
23 with whom there is a shared, well-defined, community of interests. Plaintiff's claims are typical of
24 all class members' claims as they arise out of the same course of conduct and are predicated on the
25 same violations of law.

26 24. There are questions of law and fact as to the class and sub-classes which
27 predominate over questions affecting only individual members including, without limitation:

28 (a) Whether Defendant failed to pay Class Members for all hours worked at

1 either their regular rate of pay or the applicable minimum wage;

2 (b) Whether Defendant failed to pay Class Members all overtime and/or double
3 time wages owed under the California Labor Code and the California Industrial Welfare
4 Commission's Wage Orders, and all other applicable employment laws and regulations;

5 (c) Whether Defendant complied with wage reporting as required by the
6 California Labor Code, including, but not limited to, California Labor Code section 226(a);

7 (d) Whether Defendant failed to provide Class Members with initial and/or
8 subsequent meal periods as required by the California Labor Code and the California Industrial
9 Welfare Commission's Wage Orders;

10 (e) Whether Defendant authorized and permitted Class Members to take all
11 mandatory rest breaks as required by the California Labor Code and the California Industrial
12 Welfare Commission's Wage Orders;

13 (f) Whether Defendant failed to maintain full, complete, and accurate payroll
14 records as required by California Labor Code section 1174(d);

15 (g) Whether Defendant reimbursed Class Members for business expenses
16 pursuant to Labor Code section 2802;

17 (h) Whether Defendant paid Class Members all wages due upon termination;

18 (i) Whether Defendant's conduct was willful or reckless;

19 (j) Whether Defendant engaged in unfair business practices in violation of
20 California Business and Professions Code section 17200, et seq.; and

21 (k) The appropriate amount of damages, restitution, and/or monetary penalties
22 resulting from Defendant's violations of California law.

23 25. The Court should permit this action to be maintained as a class action pursuant to
24 California Code of Civil Procedure section 382, because:

25 (a) Questions of law and fact common to the Class predominate over any
26 questions affecting individual members;

27 (b) The Class Action mechanism is superior to any other available method for
28 the fair and efficient adjudication of the claims of the members of the Class;

1 (c) The members of the Class are so numerous that it is impractical to bring all
2 members of the Class before the Court;

3 (d) Plaintiff, and the other members of the Class, will not be able to obtain
4 effective and economic legal redress unless the action is maintained as a class action;

5 (e) There is a community of interest in obtaining appropriate legal and equitable
6 relief for the statutory violations, and in obtaining adequate compensation for the damages and
7 injuries for which Defendant is responsible in an amount sufficient to adequately compensate the
8 members of the Class for the injuries sustained;

9 (f) Without Class Certification, the prosecution of separate actions by
10 individual members of the Class would create a risk of:

11 (i) Inconsistent or varying adjudications with respect to individual
12 members of the Class which would establish incompatible standards of conduct for Defendant;
13 and/or

14 (ii) Adjudications with respect to the individual members which would,
15 as a practical matter, be dispositive of the interests of other members not parties to the adjudications,
16 or would substantially impair or impede their ability to protect their interests, including, but not
17 limited to, the potential for exhausting the funds available from those parties who are, or may be,
18 responsible for Defendant; and

19 (g) Defendant has acted or refused to act on grounds generally applicable to the
20 Class, thereby making final injunctive relief appropriate with respect to the Class and each Sub-
21 class as a whole.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California Labor Code Sections 1194 and 1197**

24 **Failure to Pay Minimum Wage – Against all Defendants)**

25 26. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though
26 fully set forth herein.

27 27. California Labor Code section 1194 authorizes employees who received less than
28 the legal minimum wage to recover the unpaid balance of minimum wages owed, interest,

1 reasonable attorney's fees, and costs of suit.

2 28. At all times relevant to this action, Defendant failed to pay at least the applicable
3 minimum wage for all hours worked as a result of Defendant's practices of forcing employees to
4 work off-the-clock during meal periods and rounding employee meal period time records.

5 29. Defendant acted intentionally, oppressively, and maliciously toward Plaintiff and
6 the members of the Class, with a conscious disregard of their rights, or the consequences to them,
7 with the intent of depriving them of property and legal rights and otherwise causing them injury.

8 30. As a proximate cause of the aforementioned violations, Plaintiff and the Class have
9 been damaged in an amount according to proof at time of trial, but in an amount in excess of the
10 jurisdiction of this Court. Plaintiff and the Class are entitled to recover the unpaid balance of wages
11 owed, penalties, including penalties available pursuant to California Labor Code sections 558 and
12 1197.1(a)(1-2), liquidated damages pursuant to California Labor Code section 1194.2(a), plus
13 interest, and reasonable attorneys' fees and costs of suit according to California Labor Code section
14 1194, et seq.

15 **SECOND CAUSE OF ACTION**

16 **(Violation of California Labor Code Sections 510, 1194(a), and 1198**

17 **Failure to Pay Overtime/Double Time Wages – Against all Defendants)**

18 31. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though
19 fully set forth herein.

20 32. California Labor Code section 510 requires an employer to compensate its
21 employees at a rate of no less than one and one-half (1.5) times their regular rate of pay for any
22 work: in excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1)
23 workweek, and during the first eight (8) hours worked on the seventh (7th) day of work in any one
24 (1) workweek.

25 33. California Labor Code section 510 requires an employer to compensate its
26 employees at a rate of no less than two (2) times their regular rate of pay for any work: in excess of
27 twelve (12) hours in one (1) workday, and in excess of eight (8) hours on the seventh (7th) day of
28 work in any one (1) workweek.

34. At all times relevant herein, Plaintiff and the members of the Class worked hours in excess of eight (8) hours in one (1) workday, in excess of forty (40) hours in any one (1) workweek, and/or during the first eight (8) hours worked on the seventh (7th) day of work in any one (1) workweek, without receiving compensation at a rate of no less than one and one-half (1.5) times their regular rate of pay.

35. At all times relevant herein, Plaintiff and the members of the Class worked hours in excess of twelve (12) hours in one (1) workday and in excess of eight (8) hours on the seventh (7th) day of work in any one (1) workweek, without receiving compensation at a rate of no less than two (2) times their regular rate of pay.

36. Defendant acted intentionally, oppressively, and maliciously toward Plaintiff and the members of the Class, with a conscious disregard of their rights, or the consequences to them, with the intent of depriving them of property and legal rights and otherwise causing them injury.

37. As a proximate cause of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. Plaintiff and the Class are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code section 558, plus interest, and reasonable attorneys' fees and costs of suit according to California Labor Code section 1194, et seq.

THIRD CAUSE OF ACTION

(Violation of California Labor Code Section 226(a))

Failure to Provide Accurate, Itemized Wage Statements – Against all Defendants)

38. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though fully set forth herein.

39. California Labor Code section 226(a) provides that every employer shall, semi-monthly 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 gross wages earned.

40. Plaintiff is informed and believes, and based thereon alleges, that throughout the relevant time period, Defendant repeatedly failed to furnish Plaintiff and the Class with accurate, itemized wage statements in writing showing all hours worked, all wages earned, and applicable rates of pay.

41. As a result of Defendant's conduct, Plaintiff and the Class have been damaged and are entitled to recover, for each member of the Class, the greater of actual damages or \$50.00 for the initial pay period in which a violation occurred and \$100.00 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, in an amount to be determined at trial.

42. In addition, as a direct result of the conduct of Defendant, and each of them, as set forth above, Plaintiff and the members of the Class were forced to incur substantial attorneys' fees and costs which are recoverable under California Labor Code section 226(e) in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code Sections 226.7 and 512(a))

Failure to Provide Meal Periods – Against all Defendants)

43. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though fully set forth herein.

44. At all times relevant herein, the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the Class Members.

45. At all times set forth herein, California Labor Code section 226.7 provided and provides that no employer shall require an employee to work during any lawfully mandated meal period.

46. At all times set forth herein, California Labor Code section 512(a) provided and provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

1 47. At all times set forth herein, California Labor Code section 512(a) further provided
2 and provides that an employer may not employ an employee for a work period of more than ten
3 (10) hours per day without providing the employee with a second meal period of not less than thirty
4 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second
5 meal period may be waived by mutual consent of the employer and the employee, only if the first
6 meal period was not waived.

7 48. At all times relevant herein, Plaintiff and the Class have worked more than five (5)
8 hours in a workday.

9 49. At all times relevant herein, Plaintiff and the Class have worked more than ten (10)
10 hours in a workday.

11 50. Defendant failed to provide Plaintiff and the members of the Class with
12 uninterrupted, work-free, thirty (30) minute meal periods for shifts in excess of five (5) hours
13 worked per day and failed to compensate employees for missed initial meal periods as required by
14 law.

15 51. Defendant failed to provide Plaintiff and the members of the Class with a second
16 uninterrupted, work-free, thirty (30) minute meal period for shifts in excess of ten (10) hours
17 worked per day and failed to compensate them for missed subsequent meal periods as required by
18 law.

19 52. During the relevant time period, Defendant willfully required Plaintiff and the Class
20 to work during meal periods and failed to compensate Plaintiff and the Class for work performed
21 during meal periods.

22 53. During the relevant time period, Defendant failed to pay Plaintiff and the Class the
23 full meal period premium due pursuant to California Labor Code Section 226.7.

24 54. Defendant's conduct violates California Labor Code sections 226.7 and 512(a).

25 55. Pursuant to California Labor Code Section 226.7, Plaintiff and the Class are entitled
26 to recover from Defendant one (1) additional hour of pay at the employees' regular hourly rate of
27 compensation for each work day that the meal period was not provided.

28 56. As a proximate cause of the aforementioned violations, Plaintiff and the Class have

1 been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction
2 of this Court.

3 57. As a proximate cause of the aforementioned violations, Plaintiff and the Class have
4 been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction
5 of this Court. Plaintiff and the Class are entitled to recover the unpaid balance of wages owed,
6 penalties, including penalties available pursuant to California Labor Code sections 226.7 and 558,
7 plus interest.

8 **FIFTH CAUSE OF ACTION**

9 **(Failure to Provide Rest Breaks – Against all Defendants)**

10 58. Plaintiff refers to and incorporates herein by reference all prior paragraphs as
11 though fully set forth herein.

12 59. At all times relevant herein, the applicable IWC Wage Order and California Labor
13 Code section 226.7 was applicable to Plaintiff and the Class Members.

14 60. At all times set forth herein, California Labor Code section 226.7 provided and
15 provides that employers may not require their employees to work during a legally mandated rest
16 period.

17 61. At all times set forth herein, the applicable IWC Wage Order required and requires
18 every employer subject to the Wage Orders to authorize and permit rest periods at the rate of ten
19 (10) minutes net rest time per four (4) hours or major fraction thereof.

20 62. California Labor Code section 226.7 further provides that if an employer fails to
21 provide an employee with a legally mandated rest period, the employer shall pay the employee
22 one (1) additional hour of pay at the employee's regular rate of compensation for each workday
23 that the rest period is not provided.

24 63. At all times relevant herein, Plaintiff and the Class have regularly worked shifts of
25 a length of four (4) hours or a major fraction thereof or longer.

26 64. Defendant failed to authorize and permit Plaintiff and the members of the Class to
27 take rest periods as required by law and failed to compensate employees for paid rest breaks.

28 65. Defendant failed to separately compensate Plaintiff and the Class for paid rest

breaks during pay periods in which Defendant compensated them on a commissions-only basis.

66. During the relevant time period, Defendant failed to pay Plaintiff and the Class the full rest period premium due pursuant to California Labor Code section 226.7.

67. Defendant's conduct violates California Labor Code section 226.7.

68. Pursuant to California Labor Code section 226.7, Plaintiff and the Class are entitled to recover from Defendant one (1) additional hour of pay at the employees' regular hourly rate of compensation for each work day that a rest period was not provided.

69. As a proximate cause of the aforementioned violations, Plaintiff and the Class have been damaged in an amount to be determined at trial, but in an amount in excess of the jurisdiction of this Court. Plaintiff and the Class are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code sections 226.7 and 558, plus interest.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code Section 203

Waiting Time Penalties – Against all Defendants)

70. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though fully set forth herein.

71. Plaintiff and the Class are informed and believe and based thereon allege that California Labor Code Sections 203, 210, and 510 were in full force and effect and binding upon Defendants throughout the course of their employment.

72. At all times relevant, Plaintiff and the Class are employees of Defendants.

73. Plaintiff and the Class were not provided all wages owed to them by Defendants.

74. California Labor Code Sections 218 and 1194 establish an employee's right to recover unpaid wages, including overtime compensation, interest thereon, together with the costs of suit, and attorney's fees.

75. As a result of Defendants' failure to pay Plaintiff and the Class waiting time penalties, Plaintiff and the Class has been harmed in that they have been deprived of all wages due and owing to them.

1 76. As a result of the unlawful acts of Defendants, Plaintiff and the Class are entitled
2 to recovery of such unpaid wage amounts, penalties, plus interest and penalties thereon,
3 attorney's fees and costs pursuant to California Labor Code sections 203, 218.5, 218.6 and 1194.

4 **SEVENTH CAUSE OF ACTION**

5 **(Violation of California Labor Code Section 1174(d)**

6 **Failure to Maintain Records – Against All Defendants)**

7 77. Plaintiff refers to and incorporates herein by reference all prior paragraphs as
8 though fully set forth herein.

9 78. California Labor Code section 1174(d) provides that every employer shall keep,
10 for no less than three (3) years, payroll records showing the accurate hours worked daily by and
11 the wages paid to employees.

12 79. Plaintiff was employed by Defendant as a non-exempt employee.

13 80. However, throughout this time period, Defendant repeatedly failed, and continues
14 to fail, to maintain full, complete, and accurate payroll records showing the hours that Plaintiff
15 and the members of the Class actually worked and the total wages that they were paid.

16 81. As such, Plaintiff and the members of the Class are entitled to recover civil
17 penalties from Defendant pursuant to California Labor Code section 1174.5.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violation of California Labor Code Section 2802**

20 **Failure to Reimburse Business Expenses – Against All Defendants)**

21 82. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though
22 fully set forth herein.

23 83. California Labor Code section 2802 requires employers to indemnify employees for
24 all necessary expenditures or losses incurred by employees in direct consequence of the discharge
25 of their duties, including but not limited to mobile device, tools, and travel expenses.

26 84. Plaintiff and members of the Class have incurred expenses for supplies or utilities
27 related to the operation of facsimile machines or other methods of submitting their paperwork to
28 Defendant in direct relation to the performance of their job duties.

85. Defendant has failed to indemnify or reimburse Plaintiff and members of the Class for the expenses alleged herein.

86. Plaintiff and the members of the Class are entitled to recover from Defendant restitution equal to all unreimbursed expenses during the relevant time period, as well as all reasonable costs, including, but not limited to, attorneys' fees, that were incurred enforcing their rights to reimbursement pursuant to California Labor Code section 2802.

NINTH CAUSE OF ACTION

(Violation of California Business and Professions Code Section 17200)

Unfair Business Practice – Against All Defendants)

87. Plaintiff refers to and incorporates herein by reference all prior paragraphs as though fully set forth herein.

88. California Business and Professions Code section 17200, et seq., prohibits acts of unfair competition which means and includes “any unlawful, unfair, or fraudulent business act or practice.”

89. Within the four (4) years preceding the filing of this action, Defendant has engaged in unlawful, unfair, and/or fraudulent business acts and/or practices by engaging in the conduct set forth above. These business acts and practices violated numerous provisions of the law, including, but not limited to, the California Labor Code, California Wage Orders, and California public policy. Plaintiff reserves the right to identify additional violations of law as further investigation warrants.

90. Defendant's acts and practices, as detailed above, constitute acts of unfair competition. Defendant has engaged in an unlawful, unfair, and/or fraudulent business act and/or practices within the meaning of California Business and Professions Code section 17200, et seq.

91. By reason of Defendant's fraudulent, deceptive, unfair, and other wrongful conduct, as alleged herein, Defendant has violated California Business and Professions Code section 17200, et seq., by consummating an unlawful, unfair, and fraudulent business practice designed to deprive Plaintiff, the members of the Class, and members of the general public of their legal rights.

92. Such conduct is ongoing and continues to this date.

93. By reason of the foregoing, Plaintiff, the Class, and members of the general public

1 have suffered, and continue to suffer, damages, and are therefore entitled to the relief available
2 under California Business and Professions Code section 17200, et seq., including, but not limited
3 to, restitution, disgorgement, and injunctive relief.

4 94. As such, Plaintiff, on behalf of themselves, the Class, and the general public, seeks
5 a temporary, preliminary, and/or permanent order from this Court prohibiting Defendant from
6 continuing to engage in the unlawful, unfair, and/or fraudulent business acts or practices set forth
7 in this Complaint, in addition to disgorgement and restitution by Defendant to all persons with a
8 vested interest therein who have been adversely affected by the practices at issue.

9 **TENTH CAUSE OF ACTION**

10 **(Violation of California Labor Code Section 2698, et seq. (PAGA) – Against all Defendants)**

11 95. Plaintiff re-allege and incorporates herein by reference the above paragraphs as
12 though fully set forth herein.

13 96. Labor Code sections 2698-2699.5 provide that a civil penalty, assessed and collected
14 by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees
15 for certain violations of the Labor Code, may be recovered through a civil action by aggrieved
16 employee on behalf of himself and collectively on behalf of all other current or former employees.

17 97. California Labor Code section 2699 (a), the Private Attorneys General Act of 2004
18 (“PAGA”), states: “Notwithstanding any other provision of law, any provision of this code that
19 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
20 commissions, divisions, boards, agencies, or employees, for a violation of this code, may, as an
21 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself and other current or former employees pursuant to the procedures specified in
23 section 2699.3.”

24 98. Plaintiff and Class Members are “aggrieved employees” as defined by Labor Code
25 section 2698 et seq. in that they are all current or former employees of Defendants, and one or more
26 of the alleged violations was committed against them.

27 99. Defendant’s conduct of violating the California Labor Code constitutes violations
28 of the PAGA.

1 100. Therefore, Plaintiff requests penalties against Defendant under the provisions of
2 PAGA section 2699(f).

3 101. Prior to filing this Complaint on February 10, 2023, Plaintiff give written notice via
4 the LWDA's electronic filing platform and to Defendants via certified mail of the specific
5 provisions alleged to have been violated, including the facts and theories to support the alleged
6 violations as required by Labor Code section 2699.3(a)(1), which are incorporated by reference.

7 102. The LWDA has not provided Plaintiff with any notice that it intends on investigating
8 the alleged violations. Plaintiff does not an investigation into his claims by the LWDA.

9 103. Pursuant to Labor Code section 2699.3, notwithstanding any other provision of law,
10 Plaintiff may, as a matter of right, amend the existing complaint to add a cause of action under
11 Labor Code section 2698.

12 104. Plaintiff, individually and on behalf of all aggrieved Class Members, assert all of
13 the claims in this complaint against Defendants under the capacity of PAGA, and seeks all statutory
14 penalties available under the Labor Code.

15 105. Pursuant to Labor Code section 2698 et seq., Plaintiff, individually and on behalf of
16 all aggrieved Class Members, request and seek to recover from Defendants: minimum wage
17 compensation, overtime compensation, rest and meal period compensation, penalties, penalties for
18 failure to keep accurate payroll records, interest, attorney's fees and costs pursuant to Labor Code
19 Sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197 and 2802 as well as statutory
20 penalties, and attorneys' fees against Defendants.

21 WHEREFORE, Plaintiff pray for judgment against Defendant and DOES 1 through 100,
22 inclusive, as follows:

23 **ON THE FIRST CAUSE OF ACTION (MINIMUM WAGE):**

24 1. That the Court declare, adjudge, and decree that Defendant violated California
25 Labor Code sections 1194(a) and 1197;

26 2. For unpaid minimum wages and such general and special damages as may be
27 appropriate;

28 3. For pre-judgment interest on any unpaid compensation commencing from the date

1 such amounts were due until paid in full;

2 4. For liquidated damages in an amount equal to the minimum wages unlawfully
3 withheld pursuant to California Labor Code section 1194.2(a);

4 5. For civil penalties pursuant to California Labor Code section 1197.1(a)(1–2);

5 6. For civil penalties pursuant to California Labor Code section 558; and

6 7. For reasonable attorneys’ fees and for costs of suit incurred herein.

7 **ON THE SECOND CAUSE OF ACTION (OVERTIME/DOUBLE TIME):**

8 1. That the Court declare, adjudge, and decree that Defendant violated California
9 Labor Code sections 510, 1194(a), and 1198;

10 2. For unpaid overtime and/or double time wages and such general and special
11 damages as may be appropriate;

12 3. For pre-judgment interest on any unpaid compensation commencing from the date
13 such amounts were due until paid in full;

14 4. For civil penalties pursuant to California Labor Code section 558; and

15 5. For reasonable attorneys’ fees and for costs of suit incurred herein.

16 **ON THE THIRD CAUSE OF ACTION (WAGE STATEMENTS):**

17 1. That the Court declare, adjudge, and decree that Defendant violated California
18 Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Class members,
19 and willfully failed to provide accurate, itemized wage statements thereto;

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

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

22 4. For injunctive relief to ensure compliance with this section, pursuant to California
23 Labor Code section 226(h); and

24 5. For reasonable attorneys’ fees and for costs of suit incurred herein.

25 **ON THE FOURTH CAUSE OF ACTION (MEAL PERIODS):**

26 1. That the Court declare, adjudge, and decree that Defendant violated California
27 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
28 all meal periods (including second meal periods) to Plaintiff and Class members;

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

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

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

5. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

6. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE FIFTH CAUSE OF ACTION (REST BREAKS):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest breaks to Plaintiff and Class members;

2. That the Court make an award to Plaintiff and Class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest break was not provided;

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

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

5. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SIXTH CAUSE OF ACTION (WAITING TIME):

1. That the Court declare, adjudge, and decree that Defendant violated California Labor Code sections 201, 202, and 203 and is subject to penalties pursuant to California Labor Code section 203;

2. For an award of penalties pursuant to California Labor Code section 203 to Plaintiff and all Class members in an amount to be determined at trial;

3. For reasonable attorneys' fees and for costs of suit incurred herein.

4. For such other and further relief as the Court may deem fair and appropriate.

ON THE SEVENTH CAUSE OF ACTION (RECORD KEEPING):

1. That the Court declare, adjudge, and decree that Defendant violated California

1 Labor Code section 1174(d) by failing to maintain full, complete, and accurate payroll records; and

2 2. For civil penalties in the amount of \$500.00 for and to Plaintiff and each Class
3 members pursuant to California Labor Code section 1174.5.

4 **ON THE EIGHTH CAUSE OF ACTION (REIMBURSEMENT):**

5 1. That the Court declare, adjudge, and decree that Defendant violated California
6 Labor Code section 2802 by failing to indemnify or reimburse employees for business expenses;

7 2. For an award of unreimbursed expenses to Plaintiff and all Class members in an
8 amount to be proven at trial; and

9 3. For reasonable attorneys' fees and for costs of suit incurred herein.

10 **ON THE NINTH CAUSE OF ACTION (UNFAIR BUSINESS PRACTICE):**

11 1. For restitution of all profits and gains resulting from Defendant's unfair, unlawful,
12 and/or fraudulent business acts and/or practices to Plaintiff and all persons with a vested interest
13 therein who have been adversely affected by the practices at issue;

14 2. For an injunction permanently enjoining Defendant from continuing to engage in
15 any further acts of unfair, unlawful, and/or fraudulent business acts and/or practices; and

16 3. For reasonable attorneys' fees and for costs of suit incurred herein.

17 **ON THE TENTH CAUSE OF ACTION (PAGA):**

18 1. That the Court impose penalties against Defendant on behalf of Plaintiffs and all
19 aggrieved employees according to the Private Attorneys General Act ("PAGA"); and

20 2. For reasonable attorneys' fees and for costs of suit incurred herein.

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AS TO ALL CAUSES OF ACTION:

1. For an award of reasonable attorneys’ fees, costs, expert costs, and expenses pursuant to statutory and common law; and
2. For such other and further relief as this Court may deem just, fair, and proper.

DATED: March 3, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

/s/ Heather K. Cox

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiff
Ramon Lopez on behalf of himself and all
others similarly situated