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FILED/ENDORSED

JUN 28 2023

By: A. Turner
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

Plaintiff,

vs.

AVANTI INSTALL CALIFORNIA, LLC,
an Iowa limited liability company;
AVANTI WINDOWS & DOORS, LLC, an
Iowa limited liability company; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 34-2022-00331897-CU-OE-GDS

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

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

BY FAX

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

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

26 THE PARTIES

27 4. Plaintiff Charles Bainbridge is a resident of Sacramento, in Sacramento
28 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Installer

1 and Service Trainee from approximately March 2022 to July 2022. During his employment,
2 Plaintiff typically worked eight (8) or more hours per day and five (5) or more days per week.
3 Plaintiff's primary job duties included, without limitation, performing window installations
4 and window repairs.

5 5. AVANTI INSTALL CALIFORNIA, LLC was and is, upon information and
6 belief, an Iowa limited liability company, and at all times hereinafter mentioned, an employer
7 whose employees are engaged throughout this county and the State of California.

8 6. AVANTI WINDOWS & DOORS, LLC was and is, upon information and
9 belief, an Iowa limited liability company, and at all times hereinafter mentioned, an employer
10 whose employees are engaged throughout this county and the State of California.

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

15 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 were the partners, agents, owners, or managers of AVANTI INSTALL CALIFORNIA, LLC
17 and AVANTI WINDOWS & DOORS, LLC at all relevant times.

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

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

1 the damages herein alleged.

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

5 12. Under California law, Defendants are jointly and severally liable as employers
6 for the violations alleged herein because they have each exercised sufficient control over the
7 wages, hours, working conditions, and employment status of Plaintiff and class members.
8 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
9 controlled their work schedule and/or conditions of employment, determined their rate of pay,
10 and maintained their employment records. Defendants suffered or permitted Plaintiff and
11 class members to work and/or “engaged” Plaintiff and class members so as to create a
12 common-law employment relationship. As joint employers of Plaintiff and class members,
13 Defendants are jointly and severally liable for the civil penalties and all other relief available
14 to Plaintiff and class members under the law.

15 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
16 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
17 members because Defendants have:

- 18 (a) jointly exercised meaningful control over the work performed by
19 Plaintiff and class members;
- 20 (b) jointly exercised meaningful control over Plaintiff’s and class members’
21 wages, hours, and working conditions, including the quantity, quality
22 standards, speed, scheduling, and operative details of the tasks
23 performed by Plaintiff and class members;
- 24 (c) jointly required that Plaintiff and class members perform work which is
25 an integral part of Defendants’ businesses; and
- 26 (d) jointly exercised control over Plaintiff and class members as a matter of
27 economic reality in that Plaintiff and class members were dependent on
28 Defendants, who shared the power to set the wages of Plaintiff and class

1 members and determined their working conditions, and who jointly
2 reaped the benefits from the underpayment of their wages and
3 noncompliance with other statutory provisions governing their
4 employment.

5 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
6 there has existed a unity of interest and ownership between Defendants such that any
7 individuality and separateness between the entities has ceased.

8 15. AVANTI INSTALL CALIFORNIA, LLC; AVANTI WINDOWS & DOORS,
9 LLC; and DOES 1 through 10 are therefore alter egos of each other.

10 16. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name AVANTI.

13 17. Plaintiff further alleges, upon information and belief, that Defendants AVANTI
14 INSTALL CALIFORNIA, LLC and AVANTI WINDOWS & DOORS, LLC are alter egos of
15 each other for the following reasons:

- 16 (a) On the California Secretary of State's website
17 (<https://bizfileonline.sos.ca.gov/>), AVANTI INSTALL CALIFORNIA,
18 LLC and AVANTI WINDOWS & DOORS, LLC have the same
19 principal and/or mailing address of "102 MAIN ST[REET] PELLA, IA
20 50219";
- 21 (b) According to "Statement of Information" forms filed with the California
22 Secretary of State, AVANTI WINDOWS & DOORS, LLC serves as the
23 manager and/or member of AVANTI INSTALL CALIFORNIA, LLC;
- 24 (c) According to "Statement of Information" forms filed with the California
25 Secretary of State, AVANTI INSTALL CALIFORNIA, LLC and
26 AVANTI WINDOWS & DOORS, LLC share the same agent for service
27 of process, "CORPORATION CREATIONS NETWORK INC.; and
- 28 (d) On information and belief, AVANTI INSTALL CALIFORNIA, LLC

1 and AVANTI WINDOWS & DOORS, LLC utilize the same
2 standardized employment forms and issue the same employment
3 policies.

4 **GENERAL ALLEGATIONS**

5 18. Defendants are a leading manufacturer and installation contractor of vinyl
6 window and door systems for single-family homebuilders in Arizona, Nevada, Texas, and
7 California, including Fresno and Sacramento counties. Upon information and belief,
8 Defendants maintain a single, centralized Human Resources (“HR”) department at their
9 company headquarters in Glendale, Arizona, or Pella, Iowa, which is responsible for the
10 recruiting and hiring of new employees, and communicating and implementing Defendants’
11 company-wide policies, including timekeeping policies and meal and rest period policies, to
12 employees throughout California.

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

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

1 21. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

3 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
5 and advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
8 members were not paid for all hours worked because all hours worked were not recorded.

9 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive certain wages for
11 overtime compensation and that they were not receiving certain wages for overtime
12 compensation.

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

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

26 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to rest periods in
28 accordance with the California Labor Code and applicable IWC Wage Order or payment of

1 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
2 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
3 and class members were not authorized and permitted to take compliant rest periods, nor did
4 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
5 pay at their regular rates of pay when they were not authorized and permitted to take a
6 compliant rest period.

7 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive complete and
9 accurate wage statements in accordance with California law. In violation of the California
10 Labor Code, Plaintiff and class members were not provided complete and accurate wage
11 statements.

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

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

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

27 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive full

1 reimbursement for all business-related expenses and costs they incurred during the course and
2 scope of their employment and that they did not receive full reimbursement of applicable
3 business-related expenses and costs incurred.

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

10 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing with the LWDA and by certified mail to the employer of
28 the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall notify the employer and the aggrieved employee or
7 representative by certified mail that it does not intend to investigate the
8 alleged violation ("LWDA Notice") within sixty (60) calendar days of
9 the postmark date of the aggrieved employee's notice. Upon receipt of
10 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
11 (65) calendar days of the postmark date of the aggrieved employee's
12 notice, the aggrieved employee may commence a civil action pursuant
13 to California Labor Code section 2699 to recover civil penalties.

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

18 (a) The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated (other than those listed in Section 2699.5), including the
22 facts and theories to support the alleged violation.

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

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

7 39. On January 23, 2023, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-930996-23. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

15 40. As of the filing date of this complaint, over 65 days have passed since Plaintiff
16 sent the notice described above to the LWDA, and the LWDA has not responded that it
17 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

18 41. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
21 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

22 42. Labor Code section 558(a) provides "[a]ny employer or other person acting on
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was
27 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

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

CLASS ACTION ALLEGATIONS

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

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

48. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

49. Plaintiff’s proposed subclass consists of and is defined as follows:

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

50. Members of the Class and Subclass are referred to herein as “class members.”

1 51. Plaintiff reserves the right to redefine the Class and Subclass and to add
2 additional subclasses as appropriate based on further investigation, discovery, and specific
3 theories of liability.

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

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty
8 (40) hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to pay Plaintiff and class members at least
11 minimum wages for all hours worked;
- 12 (c) Whether Defendants failed to provide Plaintiff and class members with
13 meal periods;
- 14 (d) Whether Defendants failed to authorize and permit Plaintiff and class
15 members to take rest periods;
- 16 (e) Whether Defendants provided Plaintiff and class members with
17 complete and accurate wage statements as required by California Labor
18 Code section 226(a);
- 19 (f) Whether Defendants maintained accurate payroll records as required by
20 California Labor Code section 1174(d);
- 21 (g) Whether Defendants failed to pay earned overtime wages, minimum
22 wages, and/or meal and rest period premiums due to Plaintiff and class
23 members upon their discharge;
- 24 (h) Whether Defendants failed timely to pay overtime wages, minimum
25 wages, and/or meal and rest period premiums due to Plaintiff and class
26 members during their employment;
- 27 (i) Whether Defendants failed to reimburse Plaintiff and class members for
28 necessary and required business-related expenditures and/or losses

1 incurred by them in the scope of their employment;

- 2 (j) Whether Defendants engaged in unlawful and unfair business practices
3 in violation of California Business & Professions Code sections 17200,
4 *et seq.*; and
- 5 (k) The appropriate amount of damages, restitution, or monetary penalties
6 resulting from Defendants' violations of California law.

7 53. There is a well-defined community of interest in the litigation and the class
8 members are readily ascertainable:

- 9 (a) Numerosity: The class members are so numerous that joinder of all
10 members would be unfeasible and impractical. The membership of the
11 entire class is unknown to Plaintiff at this time; however, the class is
12 estimated to be greater than one hundred (100) individuals and the
13 identity of such membership is readily ascertainable by inspection of
14 Defendants' employment records.
- 15 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
16 protect the interests of each class member with whom he has a well-
17 defined community of interest, and Plaintiff's claims (or defenses, if
18 any) are typical of all class members as demonstrated herein.
- 19 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
20 protect the interests of each class member with whom he has a well-
21 defined community of interest and typicality of claims, as demonstrated
22 herein. Plaintiff acknowledges that he has an obligation to make known
23 to the Court any relationship, conflicts or differences with any class
24 member. Plaintiff's attorneys, the proposed class counsel, are versed in
25 the rules governing class action discovery, certification, and settlement.
26 Plaintiff has incurred, and throughout the duration of this action, will
27 continue to incur costs and attorneys' fees that have been, are, and will
28 be necessarily expended for the prosecution of this action for the

substantial benefit of each class member.

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

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

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

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

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

56. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

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

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

13 59. California Labor Code section 510 codifies the right to overtime compensation
14 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
16 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
17 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
18 in a day on the seventh (7th) day of work.

19 60. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
21 class members were not paid overtime premiums for all of the hours they worked in excess of
22 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
23 hours in a week, because all hours worked were not recorded.

24 61. First, Defendants had, and continue to have, a company-wide policy and/or
25 practice requiring Plaintiff and class members to perform various work-related tasks while
26 off-the-clock before their shifts. For example, Plaintiff was often required to arrive prior to
27 his scheduled shift-start time and begin working, loading supplies and equipment onto work
28 trucks, in order to meet Defendants' expectations of completing all scheduled window

1 installations and repairs within his scheduled hours for the day. Thus, Defendants failed to
2 track all of the time that employees spent performing work-related tasks outside of their shifts,
3 and Plaintiff and class members received no compensation for this time.

4 62. Second, during the relevant period, Defendants had, and continue to have, a
5 company-wide policy and/or practice of understaffing their jobsites while assigning heavy
6 workloads, resulting in a failure to provide Plaintiff and class members with adequate meal
7 period coverage. As a result of this lack of meal period coverage, Plaintiff and class members
8 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
9 entitled to receive a meal period. For example, Plaintiff worked through his meal periods to
10 keep up with the demands of work and complete his assigned duties. Additionally,
11 Defendants, on a company-wide basis, had a practice of failing to schedule meal periods
12 which, in conjunction with the assignment of heavy workloads, further caused Plaintiff and
13 class members to not be relieved of their duties for compliant meal periods. In addition, even
14 when Plaintiff and class members were able to take their meal periods, Defendants pressured
15 them to eat their meals while driving between client job sites. Thus, Plaintiff's and class
16 members' meal periods were missed or interrupted to complete their assigned workloads, and
17 Defendants did not pay Plaintiff and class members for the time they continued to perform
18 tasks during meal periods.

19 63. Third, during the relevant time period, Defendants implemented a company-
20 wide policy and/or practice of automatically deducting meal and rest periods from Plaintiff's
21 and class members' time records, instead of allowing employees to clock in and out for meal
22 periods. Specifically, Defendants' policy and/or practice is to automatically deduct 60
23 minutes per day for "lunch," which apparently combined one 30-minute meal period and two
24 15-minute rest periods, from Plaintiff's and class members' time records. As a result of this
25 policy, Defendants falsified and deducted meal periods from Plaintiff's and class members'
26 time records even when meal periods were missed, short, and/or interrupted. Further,
27 Defendants deducted paid rest periods from Plaintiff's and class members' time records as
28 part of this "lunch." Since Defendants only arranged for 30-minute meal periods for Plaintiff

1 and class members, but nonetheless deducted 60 minutes from Plaintiff's and class members'
2 time records, Defendants did not record all hours worked (including during meal and rest
3 periods) and Plaintiff and class members performed work for which they were not paid.

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

11 65. Defendants' failure to pay Plaintiff and class members the balance of overtime
12 compensation as required by California law, violates the provisions of California Labor Code
13 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
14 members are entitled to recover from Defendants their unpaid overtime compensation, as well
15 as interest, costs, and attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 18 **Minimum Wages** 19 **(Against all Defendants)**

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

22 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
23 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
24 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
25 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as
26 "the time during which an employee is subject to the control of an employer, and includes all
27 the time the employee is suffered or permitted to work, whether or not required to do so."
28 Cal. Code Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

1 68. As set forth above, during the relevant time period, Defendants had a company-
2 wide policy and/or practice requiring Plaintiff and class members to perform various work-
3 related tasks while off-the-clock, including before their shifts, in order to complete the daily
4 tasks that Defendants expected their employees to complete within their scheduled hours.
5 Defendants failed to track this time Plaintiff and class members spent working off-the-clock,
6 and Plaintiff and class members received no compensation for this time.

7 69. As also stated, due to Defendants' policies and/or practices of understaffing
8 their jobsites while assigning heavy workloads, failing to schedule meal periods, and requiring
9 employees to take their meal periods while driving, Plaintiff and class members were impeded
10 from taking all uninterrupted meal periods to which they were entitled and were required to
11 work off-the-clock during meal periods, have their meal periods interrupted, and/or were
12 otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, during
13 the relevant time period, Defendants implemented a company-wide policy and/or practice of
14 automatically deducting 60-minute "lunches" from Plaintiff's and class members' time
15 records, even when meal periods were missed, short, and/or interrupted and rest periods were
16 to be paid. Thus, Defendants systematically failed to pay Plaintiff and class members for
17 actual hours worked, including during meal and rest periods, because these hours were not
18 correctly recorded.

19 70. Defendants did not pay minimum wages for all hours worked by Plaintiff and
20 class members. To the extent that these off-the-clock hours did not qualify for overtime
21 premium payment, Defendants did not pay at least minimum wages for those hours worked
22 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
23 1198.

24 71. Defendants' failure to pay Plaintiff and class members minimum wages violates
25 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
26 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
27 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
28 interest thereon.

1 **THIRD CAUSE OF ACTION**

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

3 **Violations**

4 **(Against all Defendants)**

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

7 73. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

14 74. At all relevant times herein set forth, California Labor Code sections 226.7,
15 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
16 meal period mandated by an applicable order of the IWC.

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

24 76. First, during the relevant time period, as stated, Defendants had, and continue
25 to have, a company-wide policy and/or practice of understaffing while assigning heavy
26 workloads, which has resulted in a lack of meal period coverage and prevented Plaintiff and
27 class members from taking all timely, uninterrupted meal periods to which they were entitled.
28 Further, as stated, Defendants had company-wide practices and/or policies of failing to

1 schedule meal periods and pressuring employees to eat their meals while driving between
2 jobsites, which further caused Plaintiff and class members to not be relieved of their duties for
3 compliant meal periods.

4 77. As a result, Plaintiff and class members had to work in excess of five (5) hours
5 before taking their meal periods, work through all or part of their meal periods, and/or had
6 their meal periods interrupted, which prevented Plaintiff and class members from taking all
7 timely, uninterrupted meal periods to which they were entitled. For example, Plaintiff
8 frequently worked through though all or part of his meal periods, in order to complete his
9 assigned window installations and repairs within Defendants' expectations. When Plaintiff
10 was able to take a meal period, he was often required to drive and/or be driven while eating or
11 take his meal periods late.

12 78. Second, as stated, Defendants implemented a company-wide policy and/or
13 practice of automatically deducting 60-minute "lunches," or combined meal and rest periods,
14 from Plaintiff's and class members' time records, even when meal periods were missed, short,
15 and/or interrupted, instead of allowing employees to clock in and out for meal periods. As a
16 result of this policy, Defendants systematically failed to correctly record meal periods.

17 79. Third, Defendants did not provide Plaintiff and class members with second 30-
18 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
19 his employment, Plaintiff worked shifts in excess of ten (10) hours per day but was not
20 provided a second 30-minute meal period. Plaintiff and class members did not sign valid meal
21 period waivers on days that they were entitled to meal periods and were not relieved of all
22 duties.

23 80. At all times herein mentioned, Defendants knew or should have known that, as
24 a result of these policies, Plaintiff and class members were prevented from being relieved of
25 all duties and required to perform some of their assigned duties during meal periods.
26 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
27 members meal period premiums when meal periods were late, interrupted, shortened, and/or
28 missed.

1 81. Moreover, Defendants engaged in a company-wide practice and/or policy of
2 not paying meal period premiums owed when compliant meal periods are not provided.
3 Because of this practice and/or policy, Plaintiff and class members have not received premium
4 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
5 Plaintiff and class members compliant meal periods in violation of California Labor Code
6 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

11 **FOURTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 13 **(Against all Defendants)**

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

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

19 85. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 86. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest
28 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an

1 employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties—including the obligation that an employee remain on
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
4 *Inc.*, 2 Cal. 5th 257, 273 (2016).

5 87. California Labor Code section 226.7 and the applicable IWC Wage Order also
6 provide that rest periods shall be counted as hours worked for which there shall be no
7 deduction from wages. Pursuant to the applicable IWC Wage Order and California Labor
8 Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants
9 one (1) additional hour of pay at their regular rates of pay for each work day that a required
10 rest period was not authorized and permitted.

11 88. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
13 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
14 practices, including understaffing and the assignment of heavy workloads, prevented Plaintiff
15 and class members from being relieved of all duty to take rest periods. Additionally,
16 Defendants’ management erroneously informed Plaintiff and class members that they were
17 only entitled to two (2) 15-minute rest periods per shift, regardless of shift length, which were
18 to be combined with their 30-minute meal period, for a total of a 60-minute block “lunch” per
19 shift. Thus, Defendants also wholly failed to schedule rest periods, which, coupled with
20 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class
21 members not being authorized and permitted to take compliant rest periods.

22 89. As a result of Defendants’ practices and policies, Plaintiff and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
25 to forego nearly all of his rest periods because of the lack of coverage and Defendants’ failure
26 to schedule rest periods for employees. Moreover, as stated, because of Defendants’ policy of
27 deducting for combined “lunches” (meal and rest periods), Defendants unlawfully deducted
28 rest periods from Plaintiff’s and class members’ wages.

90. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

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

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

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

94. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of

1 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
2 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

3 95. Because Defendants did not record the time Plaintiff and Subclass members
4 spent working off the clock, deducted time from their records for meal periods that were
5 interrupted and/or missed (and therefore time for which they should have been paid), and
6 deducted time for rest periods that should have been paid, Defendants did not list the correct
7 amount of gross wages and net wages earned by Plaintiff and Subclass members in
8 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
9 accurately list the total number of hours worked by Plaintiff and Subclass members, in
10 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
11 during the pay period and the corresponding accurate number of hours worked at each hourly
12 rate, in violation of section 226(a)(9).

13 96. Additionally, and separate from these violations, Defendants issued uniform
14 wage statements to Plaintiff and Subclass members that failed to correctly list the address of
15 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
16 226(a)(8) is to provide California employees with transparency as to the true identity of their
17 employer, to allow the employee to contact their employer during employment or in the future
18 for various reasons, including filing an administrative claim, judicial claim, or other action to
19 seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's and
20 Subclass members' wage statements incorrectly list the employer's address as "3659 W
21 Richert Ave Fresno, CA 93722," but, according to the California Secretary of State's website,
22 Defendants' address should be "102 MAIN ST[REET] PELLA, IA 50219."

23 97. The wage statement deficiencies also include, among other things, failing to list
24 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
25 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
26 for which employees were paid; failing to list the name of the employee and only the last four
27 digits of his or her social security number or an employee identification number other than a
28 social security number; failing to list the name of the legal entity that is the employer; and/or

1 failing to state all hours worked as a result of not recording or stating the hours worked off-
2 the-clock.

3 98. California Labor Code section 1174(d) provides that “[e]very person employing
4 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
5 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
6 plants or establishments at which employees are employed, payroll records showing the hours
7 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or
9 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
10 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
11 members showing the daily hours they worked and the wages paid thereto as a result of failing
12 to record the off-the-clock hours that they worked.

13 99. California Labor Code section 1198 provides that the maximum hours of work
14 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
15 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
16 employment of any employees for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
18 Wage Order, employers are required to keep accurate time records showing when the
19 employee begins and ends each work period and meal period. During the relevant time
20 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
21 and/or meal period start and stop times for Plaintiff and Subclass members, in violation of
22 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
23 automatically deducting meal periods from Plaintiff’s and Subclass members’ time records
24 regardless of if or when meal periods were actually taken, and thereby failed to keep accurate
25 records of meal start and end times for Plaintiff and Subclass members. Also, in light of
26 Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal
27 periods to which they were entitled, Defendants kept no records of meal start and end times
28 for second meal periods.

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

SIXTH CAUSE OF ACTION

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

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

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

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

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

105. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201

1 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
3 thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 6 **Employment**

7 **(Against all Defendants)**

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

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

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

18 109. At all times relevant herein, Labor Code section 204 provides that all wages
19 earned by any person in any employment between the sixteenth (16th) and the last day,
20 inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
22 month.

23 110. At all times relevant herein, Labor Code section 204 provides that all wages
24 earned for labor in excess of the normal work period shall be paid no later than the payday for
25 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
26 204 provides that the requirements of this section are deemed satisfied by the payment of
27 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
28 seven (7) calendar days following the close of the payroll period.

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

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

EIGHTH CAUSE OF ACTION

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

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

114. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

115. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff and class members were required to use their personal mobile devices for work-

1 related tasks, including navigating to Defendants' clients' jobsites and responding to calls or
2 text messages from Defendants' managers. Specifically, Plaintiff used his personal cellular
3 phone and mobile data for GPS navigation in traveling to Defendants' clients' jobsites and for
4 responding to calls or text messages from his managers or office staff. Although Defendants
5 required Plaintiff and class members to utilize their personal mobile devices and/or mobile
6 data to carry out their work-related responsibilities, Defendants failed to reimburse them for
7 these costs.

8 116. Defendants could have provided Plaintiff and class members with company
9 mobile devices, or Defendants could have reimbursed employees for their mobile device
10 usage. Instead, Defendants passed these operating costs off onto Plaintiff and class members.
11 At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

12 117. Defendants' company-wide policy and/or practice of passing on their operating
13 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
14 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
15 business-related expenses and costs.

16 118. Plaintiff and class members are entitled to recover from Defendants their
17 business-related expenses incurred during the course and scope of their employment, plus
18 interest.

19 **NINTH CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

24 120. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
25 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
26 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
27 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
28 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of

those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein.

3 122. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil
4 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **TENTH CAUSE OF ACTION**

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

7 **Unlawful Business Practices**

8 **(Against all Defendants)**

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

11 124. Defendants are “persons” as defined by California Business & Professions
12 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
13 and/or associations.

14 125. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
15 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
16 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
17 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
18 meaning of Code of Civil Procedure section 1021.5.

19 126. Defendants’ activities, as alleged herein, are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business &
21 Professions Code sections 17200, *et seq.*

22 127. A violation of California Business & Professions Code sections 17200, *et seq.*
23 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
24 policies and practices have violated state law in at least the following respects:

- 25 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
26 class members, to work overtime without paying them proper
27 compensation in violation of California Labor Code sections 510 and
28 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (b) Failing to pay at least minimum wage to Plaintiff and class members in
2 violation of California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
4 herein;
- 5 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
6 members in violation of California Labor Code sections 226.7, 512(a),
7 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 8 (d) Failing to authorize and permit Plaintiff and class members to take
9 uninterrupted rest periods in violation of California Labor Code sections
10 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
11 herein;
- 12 (e) Failing to provide Plaintiff and class members with accurate wage
13 statements and failing to maintain accurate payroll records in violation
14 of California Labor Code sections 226(a), 1174(d), and 1198, and the
15 applicable IWC Wage Order, as alleged herein;
- 16 (f) Failing timely to pay all earned wages to Plaintiff and class members in
17 violation of California Labor Code section 204, as alleged herein; and
- 18 (g) Failing to reimburse Plaintiff and class members for all business
19 expenses necessarily incurred in violation of California Labor Code
20 section 2802, as alleged herein.

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

25 129. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
26 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
27 Defendants during a period that commences four years prior to the filing of this complaint; a
28 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and

1 class members; and an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **ELEVENTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, *et seq.* –** 5 **Unfair Business Practices** 6 **(Against all Defendants)**

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

9 131. Defendants are "persons" as defined by California Business & Professions
10 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
11 and/or associations.

12 132. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
13 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
14 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
15 seeks to enforce important rights affecting the public interest within the meaning of Code of
16 Civil Procedure section 1021.5.

17 133. Defendants' activities, namely Defendants' company-wide practice and/or
18 policy of not paying Plaintiff and class members all meal and rest period premiums due to
19 them under Labor Code section 226.7, deprived Plaintiff and class members of the
20 compensation guarantee and enhanced enforcement implemented by section 226.7. The
21 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
22 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
23 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
24 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
25 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
26 unfair business practice in violation of California Business & Professions Code sections
27 17200, *et seq.* (*Id.*)

28 134. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on any unfair business practice. In the instant case, Defendants' policies
2 and practices have violated the spirit of California's meal and rest period laws and constitute
3 acts against the public policy behind these laws.

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

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

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

16 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
17 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
18 reserves the right to amend his prayer for relief to seek a different amount.

19 **Class Certification**

- 20 2. That this case be certified as a class action;
21 3. That Plaintiff be appointed as the representative of the Class and Subclass;
22 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Third Cause of Action

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

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

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

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

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

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

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

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

9 **As to the Sixth Cause of Action**

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

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

16 38. For waiting time penalties according to proof pursuant to California Labor
17 Code section 203 for all employees who have left Defendants' employ;

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

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

22 41. For such other and further relief as the Court may deem equitable and
23 appropriate.

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

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

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

3 44. For statutory penalties according to proof pursuant to California Labor Code
4 section 210;

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

7 46. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 47. For such other and further relief as the Court may deem equitable and
10 appropriate.

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

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

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

17 50. For pre-judgment interest on any unpaid business-related expenses from the
18 date such amounts were due, or as otherwise provided by law;

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

21 52. For attorneys' fees and costs pursuant to California Labor Code section
22 2802(c), or as otherwise provided by law; and

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

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

26 54. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
28 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); and 2802 (by failing to reimburse business expenses);

7 55. For civil penalties pursuant to the California Labor Code, including sections
8 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
9 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
10 1198, and 2802;

11 56. For attorneys' fees and costs pursuant to California Labor Code section
12 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
13 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
14 1197, 1197.1, 1198, and 2802;

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

16 58. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
20 to provide Plaintiff and class members all overtime wages due to them, failing to provide
21 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
22 class members all meal periods, failing to authorize and permit Plaintiff and class members to
23 take all rest periods, failing to provide Plaintiff and class members accurate and complete
24 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
25 failing to timely pay Plaintiff and class members all earned wages during employment, and
26 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
27 unlawful business practice in violation of California Business and Professions Code sections
28 17200, *et seq.*;

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

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

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

9 63. For such other and further relief as the Court may deem equitable and
10 appropriate.

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

12 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
13 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
14 an unfair business practice in violation of California Business and Professions Code sections
15 17200, *et seq.*;

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

19 66. For the appointment of a receiver to receive, manage, and distribute any and all
20 funds disgorged from Defendants and determined to have been wrongfully acquired by
21 Defendants as a result of violations of California Business & Professions Code sections
22 17200, *et seq.*;

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

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

Dated: June 28, 2023

Respectfully submitted,
Capstone Law APC



By: _____
Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Charles Bainbridge

EXHIBIT “1”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

January 23, 2023

VIA ONLINE SUBMISSION

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

Subject: *Charles Bainbridge v. Avanti Install California, LLC, et al.*

Dear PAGA Administrator:

This office represents Charles Bainbridge in connection with his claims under the California Labor Code. Mr. Bainbridge was an employee of AVANTI INSTALL CALIFORNIA, LLC and/or AVANTI WINDOWS & DOORS, LLC. For the purpose of this letter, Mr. Bainbridge collectively refers to these entities as “AVANTI.”

The employers may be contacted directly at the addresses below:

AVANTI INSTALL CALIFORNIA, LLC
102 MAIN STREET
PELLA, IA 50219

AVANTI WINDOWS & DOORS, LLC
102 MAIN ST
PELLA, IA 50219

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

AVANTI employed Mr. Bainbridge as an hourly paid, non-exempt employee from approximately March 2022 to July 2022. Mr. Bainbridge worked for AVANTI as an Installer and Service Trainee out of its location in Sacramento, California. During his employment, Mr. Bainbridge typically worked eight (8) or more hours per day and five (5) or more days per week. At the time Mr. Bainbridge’s employment with AVANTI ended, he earned \$20.00 per hour. His job duties included, without limitation, performing window installations and window repairs.

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

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

AVANTI INSTALL CALIFORNIA, LLC and AVANTI WINDOWS & DOORS, LLC are Iowa limited liability companies. Together, they are a leading manufacturer and installation contractor of vinyl window and door systems for single-family homebuilders in Arizona, Nevada, Texas, and California, including Fresno and Sacramento counties. Upon information and belief, AVANTI maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Glendale, Arizona, or Pella, Iowa, for all non-exempt, hourly paid employees working for AVANTI in California, including Mr. Bainbridge and other aggrieved employees. At all relevant times, AVANTI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Bainbridge and other aggrieved employees, regardless of their location or position.

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

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

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

AVANTI willfully failed to pay all overtime wages owed to Mr. Bainbridge and other aggrieved employees. During the relevant time period, Mr. Bainbridge and other aggrieved employees were

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

not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, AVANTI had, and continues to have, a company-wide policy and/or practice requiring Mr. Bainbridge and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts. For example, Mr. Bainbridge was often required to arrive prior to his scheduled shift-start time and begin working, loading supplies and equipment onto work trucks, in order to meet AVANTI's expectations of completing all scheduled window installations and repairs within his scheduled hours for the day. Thus, AVANTI failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Bainbridge and other aggrieved employees received no compensation for this time.

Second, during the relevant period, AVANTI had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Mr. Bainbridge and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Bainbridge and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Bainbridge worked through his meal periods to keep up with the demands of work and complete his assigned duties. Additionally, AVANTI, on a company-wide basis, had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Bainbridge and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, even when Mr. Bainbridge and other aggrieved employees were able to take their meal periods, AVANTI pressured them to eat their meals while driving between client job sites. Thus, Mr. Bainbridge's and other aggrieved employees' meal periods were missed or interrupted to complete their assigned workloads, and AVANTI did not pay Mr. Bainbridge and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, during the relevant time period, AVANTI implemented a company-wide policy and/or practice of automatically deducting meal and rest periods from Mr. Bainbridge's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods. Specifically, AVANTI's policy and/or practice is to automatically deduct 60 minutes per day for "lunch," which apparently combined one 30-minute meal period and two 15-minute rest periods, from Mr. Bainbridge's and other aggrieved employees' time records. As a result of this policy, AVANTI falsified and deducted meal periods from Mr. Bainbridge's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Further, AVANTI deducted paid rest periods from Mr. Bainbridge's and other aggrieved employees' time records as part of this "lunch." Since AVANTI only arranged for 30-minute meal periods for Mr. Bainbridge and other aggrieved employees, but nonetheless deducted 60 minutes from Mr. Bainbridge's and other aggrieved employees' time records, AVANTI did not record all hours worked (including during meal and rest periods) and Mr. Bainbridge and other aggrieved employees performed work for which they were not paid.

AVANTI knew or should have known that as a result of these company-wide practices and/or policies, Mr. Bainbridge and other aggrieved employees were performing assigned duties off-the-clock before their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Bainbridge and other aggrieved employees worked shifts of

eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

As set forth above, during the relevant time period, AVANTI had a company-wide policy and/or practice requiring Mr. Bainbridge and other aggrieved employees to perform various work-related tasks while off-the-clock, including before their shifts, in order to complete the daily tasks that AVANTI expected its employees to complete within their scheduled hours. AVANTI failed to track this time Mr. Bainbridge and other aggrieved employees spent working off-the-clock, and Mr. Bainbridge and other aggrieved employees received no compensation for this time.

As also stated, due to AVANTI's policies and/or practices of understaffing its jobsites while assigning heavy workloads, failing to schedule meal periods, and requiring employees to take their meal periods while driving, Mr. Bainbridge and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, during the relevant time period, AVANTI implemented a company-wide policy and/or practice of automatically deducting 60-minute "lunches" from Mr. Bainbridge's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted and rest periods were to be paid. Thus, AVANTI systematically failed to pay Mr. Bainbridge and other aggrieved employees for actual hours worked, including during meal and rest periods, because these hours were not correctly recorded.

Thus, AVANTI did not pay at least minimum wages for all hours worked by Mr. Bainbridge and other aggrieved employees in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. To the extent that these off-the-clock hours did not qualify for overtime premium payment, AVANTI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, AVANTI regularly failed to pay at least minimum wages to Mr. Bainbridge and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Bainbridge and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

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

First, during the relevant time period, as stated above, AVANTI had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Bainbridge and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, AVANTI had company-wide practices and/or policies of failing to schedule meal periods and pressuring employees to eat their meals while driving between jobsites, which further caused Mr. Bainbridge and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Bainbridge and other aggrieved employees had to work through all or part of their meal periods and/or had their meal periods interrupted, which prevented Mr. Bainbridge and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, Mr. Bainbridge frequently worked through all or part of his meal periods, in order to complete his assigned window installations and repairs within AVANTI's expectations. When Mr. Bainbridge was able to take a meal period, he was often required to drive and/or be driven while eating or take his meal periods late.

Second, as stated, AVANTI implemented a company-wide policy and/or practice of automatically deducting 60-minute “lunches,” or combined meal and rest periods, from Mr. Bainbridge’s and other aggrieved employees’ time records, even when meal periods were missed, short, and/or interrupted, instead of allowing employees to clock in and out for meal periods. As a result of this policy, AVANTI systematically failed to correctly record meal periods.

Third, AVANTI did not provide Mr. Bainbridge and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Mr. Bainbridge worked shifts in excess of ten (10) hours per day but was not provided a second 30-minute meal period. Mr. Bainbridge and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

AVANTI knew or should have known that as a result of its policies and practices, Mr. Bainbridge and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. AVANTI further knew or should have known that it did not pay Mr. Bainbridge and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over

how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC Wage Order also provide that rest periods shall be counted as hours worked for which there shall be no deduction from wages.

During the relevant time period, AVANTI regularly failed to authorize and permit Mr. Bainbridge and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, AVANTI’s company-wide practices, including understaffing and the assignment of heavy workloads, prevented Mr. Bainbridge and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, AVANTI’s management erroneously informed Mr. Bainbridge and other aggrieved employees that they were only entitled to two (2) 15-minute rest periods per shift, regardless of shift length, which were to be combined with their 30-minute meal period, for a total of a 60-minute block “lunch” per shift. Thus, AVANTI also wholly failed to schedule rest periods, which, coupled with AVANTI’s failure to provide adequate rest period coverage, further led to Mr. Bainbridge and other aggrieved employees not being authorized and permitted to take compliant rest periods.

As a result, Mr. Bainbridge and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Bainbridge had to forego nearly all of his rest periods because of the lack of coverage and AVANTI’s failure to schedule rest periods for employees. Moreover, as stated, because of AVANTI’s policy of deducting for combined “lunches” (meal and rest periods), AVANTI unlawfully deducted rest periods from Mr. Bainbridge’s and other aggrieved employees’ wages.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who

violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, AVANTI has knowingly and intentionally provided Mr. Bainbridge and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AVANTI issued uniform wage statements to Mr. Bainbridge and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, AVANTI violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

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

Third, and separately from these violations, AVANTI issued uniform wage statements to Mr. Bainbridge and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, AVANTI systematically, and on a company-wide basis, issued wage statements to Mr. Bainbridge and other aggrieved employees that incorrectly list the employer's address as "3659 W Richert Ave Fresno, CA 93722," but, according to the California Secretary of State's website, AVANTI's address should be "102 MAIN ST[REET] PELLA, IA 50219."

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to

list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, AVANTI failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and stop times for Mr. Bainbridge and other aggrieved employees, in violation of section 1198. As stated, AVANTI engaged in a company-wide practice and/or policy of automatically deducting meal periods from Mr. Bainbridge’s and other aggrieved employees’ time records regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal period start and end times for Mr. Bainbridge and other aggrieved employees. Furthermore, in light of AVANTI’s failure to provide Mr. Bainbridge and other aggrieved employees with second 30-minute meal periods to which they were entitled, AVANTI kept no records of meal start and end times for second meal periods.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon

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

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

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, AVANTI, on a company-wide basis, required Mr. Bainbridge and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. Bainbridge and

other aggrieved employees were required to use their personal mobile devices for work-related tasks, including navigating to AVANTI's clients' jobsites and responding to calls or text messages from AVANTI's managers. Specifically, Mr. Bainbridge used his personal cellular phone and mobile data for GPS navigation in traveling to AVANTI's clients' jobsites and for responding to calls or text messages from his managers or office staff. Although AVANTI required Mr. Bainbridge and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, AVANTI failed to reimburse them for their costs incurred.

AVANTI could have provided Mr. Bainbridge and other aggrieved employees with company mobile devices, or, AVANTI could have reimbursed employees for the cost of their mobile device usage. Instead, AVANTI passed these operating costs off onto Mr. Bainbridge and other aggrieved employees.

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

California Labor Code § 558(a)

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

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: AVANTI INSTALL CALIFORNIA, LLC (via U.S. Certified Mail); AVANTI WINDOWS & DOORS, LLC (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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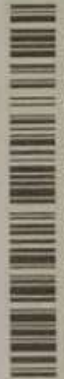
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PROOF OF SERVICE

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

On **June 28, 2023**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Adam J. Fiss
afiss@littler.com
LITTLER MENDELSON, P.C.
50 W. San Fernando, 7th Floor
San Jose, California 95113

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AVANTI INSTALL CALIFORNIA, LLC and
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MWard@littler.com
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[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 28, 2023**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature