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

WILLY BARRIGA, 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.

DRYCO CONSTRUCTION, INC., a
 California corporation; and DOES 1
 through 10, inclusive,

Defendants.

Case No.: 23CV033393

**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 Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Recovery Periods);
- (6) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During

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- Employment);
- (9) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11160 Subdivision 5(B) (Failure to Provide Reporting Time Pay);
 - (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
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. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Fremont, County of Alameda, in accordance with California Corporations Code
7 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
8 Defendants employ persons in this county, and employed Plaintiff in this county, and thus a
9 substantial portion of the transactions and occurrences related to this action occurred in this
10 county.

11 **THE PARTIES**

12 4. Plaintiff Willy Barriga is a resident of Pittsburg, in Contra Costa County,
13 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
14 approximately February 2022 to August 2022. Plaintiff worked for Defendants as a Seal Coat
15 and Stripping Laborer out of their location in Fremont, California. Plaintiff typically worked
16 eight (8) or more hours per day and five (5) or more days per week. Plaintiff's job duties
17 included, without limitation, painting stencils, posting construction signs, handling
18 thermoplastic paint, assisting construction employees, driving company vehicle to job sites,
19 and loading and unloading company vehicles.

20 5. DRYCO CONSTRUCTION, INC., was and is, upon information and belief, a
21 California corporation, and at all times hereinafter mentioned, an employer whose employees
22 are engaged throughout this county and the State of California.

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

27 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers of DRYCO CONSTRUCTION, INC. at all

1 relevant times.

2 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, DRYCO
4 CONSTRUCTION, INC. and/or DOES 1 through 10 (collectively, “Defendants” or
5 “DRYCO”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
6 in concert with, each of the other co-Defendants and was acting within the course and scope of
7 such agency, employment, joint venture, or concerted activity with legal authority to act on
8 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
9 the official policy of Defendants.

10 9. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

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

17 **GENERAL ALLEGATIONS**

18 11. Defendants operate a pavement maintenance business and specialize in asphalt,
19 concrete, and fencing services in California. Upon information and belief, Defendants
20 maintain a single, centralized Human Resources (“HR”) department at their corporate
21 headquarters in Fremont, California, which is responsible for the recruiting and hiring of new
22 employees, and communicating and implementing Defendants’ company-wide policies,
23 including timekeeping policies and meal and rest period policies, to employees throughout
24 California.

25 12. In particular, Plaintiff and class members, on information and belief, received
26 the same standardized documents and/or written policies. Upon information and belief, the
27 usage of standardized documents and/or written policies, including new-hire documents,
28 indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions. Upon
2 information and belief, Defendants set forth uniform policies and procedures in several
3 documents provided at an employee's time of hire.

4 13. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their corporate headquarters in Fremont, California, which processes payroll for
6 all non-exempt, hourly paid employees working for Defendants at their various locations and
7 job sites in California, including Plaintiff and class members. Based upon information and
8 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
9 employees in California, irrespective of their work locations. Upon information and belief,
10 Defendants process payroll for departing employees in the same manner throughout the State
11 of California, regardless of the manner in which each employee's employment ends.

12 14. Defendants continue to employ non-exempt or hourly paid employees in
13 California.

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

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

20 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive certain wages for
22 overtime compensation and that they were not receiving certain wages for overtime
23 compensation.

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

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

9 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to rest periods in
11 accordance with the California Labor Code and applicable IWC Wage Order or payment of
12 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
13 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
14 and class members were not authorized and permitted to take compliant rest periods, nor did
15 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
16 pay at their regular rates of pay when they were not authorized and permitted to take a
17 compliant rest period.

18 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to recovery periods in
20 accordance with the California Labor Code and applicable General Industry Safety Order or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 provided a compliant recovery period. In violation of the California Labor Code, Plaintiff and
23 class members were not provided compliant recovery periods, nor did Defendants provide
24 Plaintiff and class members with payment of one (1) additional hour of pay at their regular
25 rates of pay when they were not provided a compliant recovery period.

26 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive complete and
28 accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and class members were not provided complete and accurate wage
2 statements.

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

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

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 timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and class
16 members did not receive payment of all wages, including, but not limited to, overtime wages;
17 minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within
18 permissible time periods.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive all reporting time
21 pay when Plaintiff and class members were required to report to work but were put to work
22 for less than half of their usual or scheduled shift. In violation of the California Labor Code
23 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time
24 pay.

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

1 business-related expenses and costs incurred.

2 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that Defendants had a duty to provide
4 Plaintiff and class members with written notice of the material terms of their employment with
5 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

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

16 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated, including the facts and theories to support the alleged
8 violation.

9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).

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

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

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

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice sent by the aggrieved
6 employee or representative. The employer shall give written notice
7 within that period of time by certified mail to the aggrieved employee or
8 representative and by online filing with the LWDA if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the aggrieved employee may
12 commence a civil action pursuant to Section 2699.

13 36. On January 5, 2023, Plaintiff provided written notice by online filing to the
14 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-927750-23. On January 6, 2023, Plaintiff filed an
20 amended written notice by online filing to the LWDA and by certified mail to Defendants of
21 the specific provisions of the California Labor Code alleged to have been violated,
22 supplementing and/or clarifying the facts and theories to support the alleged violations set
23 forth in his original LWDA notice, in accordance with California Labor Code section 2699.3.
24 True and correct copies of Plaintiff's written notices to the LWDA and Defendants are
25 attached hereto as "Exhibit 1."

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

1 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
4 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

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

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

20 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all
23 other aggrieved employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
25 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

26 **CLASS ACTION ALLEGATIONS**

27 43. Plaintiff brings this action on his own behalf, as well as on behalf of each and
28 all other persons similarly situated, and thus seeks class certification under California Code of

Civil Procedure section 382.

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

45. 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").

46. 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").

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

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

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

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (e) Whether Defendants failed to provide Plaintiff and class members with recovery periods;

- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed to timely pay overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay to Plaintiff and class members during their employment;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11160(5);
- (k) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (l) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (m) Whether Defendants failed to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

1 50. There is a well-defined community of interest in the litigation and the class
2 members are readily ascertainable:

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

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

52. 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.”

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

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

1 workweek.

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

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

13 57. During the relevant time period, Defendants willfully failed to pay all overtime
14 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
15 class members were not paid overtime premiums for all of the hours they worked in excess of
16 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
17 hours in a week, because all hours worked were not recorded.

18 58. First, Defendants had, and continue to have, a company-wide policy and/or
19 practice of discouraging and impeding Plaintiff and class members from recording hours
20 worked that were outside their scheduled shifts, in order to limit the amount of overtime
21 employees could accrue. On information and belief, Defendants' policy of discouraging and
22 limiting overtime, coupled with Defendants' practice of assigning heavy workloads and
23 understaffing (*see infra*), led Plaintiff and class members to work off-the-clock before and
24 after their scheduled shift times. Because Defendants discouraged overtime accrual by,
25 among other things, shaving off the time that Plaintiff and class members worked before and
26 after their shifts, Plaintiff and class members were required to complete assigned tasks outside
27 of their scheduled shifts without being compensated for the time they worked. For example,
28 Plaintiff's supervisors would ask him to report to work before his scheduled shift start-time

1 and begin cleaning and preparing his assigned company vehicle for the day and loading it with
2 materials. As a further example, Plaintiff was pressured to clock out at the end of his
3 scheduled shift and continue working to complete tasks, such as unloading and cleaning the
4 company vehicle and throwing away trash and used materials.

5 59. Second, upon information and belief, Defendants' management engaged in a
6 company-wide practice and/or policy of frequently interlineating, altering, and/or falsifying
7 Plaintiff's and class members' time records to reflect only their scheduled shift start-times and
8 shift end-times, instead of the actual hours they worked. Further, Defendants had a company-
9 wide policy and/or practice of improperly rounding employees' clock-in and clock-out times
10 in their timekeeping system to the nearest quarter (0.25) of an hour. Defendants' rounding
11 policy resulted in the failure to compensate Plaintiff and class members fully for all hours
12 worked, causing Plaintiff and class members to not be paid overtime wages for all of the
13 overtime hours they actually worked. Upon information and belief, Defendants' timekeeping
14 practices and/or policies are, and continue to be, unfair and have, over time, resulted in the
15 underpayment of wages to Plaintiff and class members. To the extent Defendants'
16 timekeeping practices and/or policies have taken away time worked that was eligible for
17 overtime, Plaintiff and class members have been denied overtime pay for all hours worked.

18 60. Third, Defendants have, systematically, and on a company-wide basis,
19 scheduled and dispatched their employees to complete time-sensitive jobs, which included
20 traveling to various job sites, without building in sufficient time to allow for 30-minute meal
21 periods, such that Plaintiff and class members were prevented from taking all timely,
22 uninterrupted 30-minute meal periods, and were forced to work off-the-clock during their
23 meal periods to complete their assigned tasks. Because completing the jobs Defendants
24 assigned to Plaintiff and class members often took longer than the time Defendants allotted for
25 them, Plaintiff and class members were unable to take compliant meal periods. In conjunction
26 with varying job durations, travel time between job sites could take longer than anticipated
27 due to traffic conditions, which further impeded Plaintiff and class members from taking
28 compliant meal periods. And, upon information and belief, Defendants had no mechanism in

1 place to permit Plaintiff and class members to take meal periods when the work schedule was
2 thrown off because one or more of their jobs took longer than the scheduled time, or if travel
3 time between job sites was extended due to traffic conditions. Defendants also had a practice
4 of failing to schedule meal periods, which further prevented Plaintiff and class members from
5 being relieved of their duties for compliant meal periods.

6 61. Fourth, on information and belief, because Defendants frowned upon
7 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
8 class members to clock out for meal periods and/or adjusted their time records to reflect
9 compliant meal periods, even when they did not receive a compliant meal period. Thus,
10 Defendants did not record all hours worked during meal periods and Plaintiff and class
11 members performed work during meal periods for which they were not paid.

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

19 63. Defendants' failure to pay Plaintiff and class members the balance of overtime
20 compensation, as required by California law, violates the provisions of California Labor Code
21 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
22 members are entitled to recover from Defendants their unpaid overtime compensation, as well
23 as interest, costs, and attorneys' fees.

24 **SECOND CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 26 **Minimum Wages** 27 **(Against all Defendants)**

28 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 65. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
4 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
5 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as
6 “the time during which an employee is subject to the control of an employer, and includes all
7 the time the employee is suffered or permitted to work, whether or not required to do so.”
8 Cal. Code Regs. Tit. 8, § 11160(2)(J) (defining “Hours Worked”).

9 66. As stated, during the relevant time period, Defendants had a company-wide
10 policy and/or practice of requiring Plaintiff and class members to perform various work-
11 related tasks while off-the-clock before and after their shifts, including preparing, cleaning,
12 loading, and unloading their assigned company vehicles and throwing away trash and used
13 materials. Further, Defendants maintained a company-wide policy and/or practice of altering,
14 adjusting, and/or falsifying employee time records to reflect scheduled hours rather than hours
15 actually worked, thereby shorting Plaintiff and class members for work performed outside of
16 their scheduled shifts. Moreover, due to Defendants’ policy of improperly rounding
17 Plaintiff’s and class members’ clock-in and clock-out times in their timekeeping system to the
18 nearest quarter-hour, Defendants failed to compensate Plaintiff and class members fully for all
19 hours worked.

20 67. Moreover, as set forth above, due to Defendants’ policies and/or practices of
21 understaffing job sites while assigning heavy workloads, failing to adhere to a schedule for
22 meal periods, and scheduling time-sensitive jobs while allowing insufficient time for the
23 employees to actually complete the jobs and/or or travel between job sites, Plaintiff and class
24 members have been impeded from taking all uninterrupted meal periods to which they are
25 entitled and have been required to work off-the-clock during meal periods. Moreover, as
26 stated, in order to prevent employees from accruing meal period penalties, upon information
27 and belief, Defendants’ management pressured employees to clock out for meal periods even
28 when meal periods were missed, short, and/or interrupted and/or adjusted their time records to

1 reflect compliant meal periods. Thus, Defendants systematically have failed to pay Plaintiff
2 and class members for actual hours worked during unpaid meal periods because these hours
3 were not correctly recorded.

4 68. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
5 and class members. To the extent that these off-the-clock hours did not qualify for overtime
6 premium payment, Defendants did not pay at least minimum wages for those hours worked
7 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198.

9 69. As result, Defendants regularly failed to pay at least minimum wages to
10 Plaintiff and class members for all of the hours they worked in violation of California Labor
11 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code
12 section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

14 **THIRD CAUSE OF ACTION**

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

16 **Violations**

17 **(Against all Defendants)**

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

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

27 72. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

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

8 74. First, during the relevant time period, as stated, Defendants had, and continue
9 to have, a company-wide policy and/or practice of understaffing, assigning heavy workloads,
10 and scheduling time-sensitive jobs while allowing insufficient time for the employees to
11 actually complete the jobs, which resulted in a lack of meal period coverage and prevented
12 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
13 were entitled. Further, as stated, Defendants had company-wide practices and/or policies of
14 failing to schedule meal periods, which further caused Plaintiff and class members to not be
15 relieved of their duties for compliant meal periods. For example, Plaintiff worked through his
16 meal periods at least two times per week, took his meal periods late, and had his meal periods
17 cut short in order to complete his assigned work and meet Defendants' expectations. Thus, as
18 a result of Defendants' policies and/or practices, Plaintiff and class members were forced to
19 work in excess of five (5) hours before taking a meal period, had their meal periods cut short,
20 and/or had to forgo their meal periods altogether.

21 75. Second, as set forth above, because Defendants frowned upon employees
22 accruing meal period penalties, Defendants' management pressured Plaintiff and class
23 members to clock out for meal periods to reflect compliant meal periods, and/or adjusted their
24 time records to reflect compliant meal periods.

25 76. Third, Defendants did not provide Plaintiff and class members with second 30-
26 minute meal periods on days that they worked in excess of 10 hours in one day. For example,
27 during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day and
28 was not provided a second meal period. Plaintiff and class members did not sign valid meal

1 period waivers on days that they were entitled to meal periods and were not relieved of all
2 duties.

3 77. Moreover, Defendants had a company-wide policy of requiring all newly hired
4 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
5 the position that non-exempt, hourly paid employees had waived their rights to second meal
6 periods for the entirety of their employment and, on that basis, did not provide them with all
7 meal periods to which they were entitled. Moreover, Defendants' meal period waiver form
8 requires employees provide written notice should they wish to revoke the waiver.
9 Defendants' presumption that meal periods would not be provided for shifts in excess of ten
10 (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or
11 near the time of hire, and imposition on employees to revoke the waivers in writing,
12 discouraged and impeded Plaintiff and class members from taking all meal periods to which
13 they were entitled.

14 78. Furthermore, an employer's obligation to provide a meal period is only
15 "triggered" when the employer "employs an employee for a work period of more than five
16 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
17 anyone to work for a full five hours, its meal break obligation is triggered.").

18 [A]fter the meal break obligation is triggered . . . an employer is put to a
19 choice: it must (1) afford an off-duty meal period; (2) consent to a
20 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
21 obtain written agreement to an on-duty meal period if circumstances
22 permit. Failure to do one of these will render the employer liable for
23 premium pay.

24 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
25 required Plaintiff and class members to sign meal period waivers simultaneously at or near
26 their time of hire (as opposed to on a specific work day) renders them invalid and
27 unenforceable, because Defendants' obligation to provide Plaintiff and class members with
28 meal periods did not arise until they had employed them for a full five (5) hours.

79. Additionally, Defendants' "Second Meal Break Waiver" form states, "In order
for this waiver to be valid, an authorized company official must also authorize the waiver in

1 writing by signing below.” However, the blanket meal period waiver was only signed by
2 Plaintiff.

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

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

19 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods were not provided.
21 Because of this practice and/or policy, Plaintiff and class members have not received all
22 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
23 provide Plaintiff and class members compliant meal periods in violation of California Labor
24 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

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

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

86. At all relevant times, 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.

87. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

88. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide

1 practices of understaffing and assignment of heavy workloads prevented Plaintiff and class
2 members from being relieved of all duty to take their rest periods. Defendants also failed to
3 schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
4 coverage, further led to Plaintiff and class members not being authorized and permitted to take
5 rest periods.

6 89. Furthermore, upon information and belief, during the relevant time period,
7 Defendants maintained and implemented a company-wide on-premises rest period policy,
8 which mandated that Plaintiff and/or class members remain on the work premises during their
9 rest periods. Because Plaintiff and/or class members were restricted from leaving the
10 premises during rest periods, they were denied the ability to use their rest periods freely for
11 their own purposes, such as running personal errands. Thus, Defendants effectively
12 maintained control over Plaintiff and/or class members during rest periods.

13 90. As a result of Defendants' practices and policies, Plaintiff and class members
14 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
15 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
16 Plaintiff had to forego his rest periods altogether, due to Defendants' policy of assigning
17 heavy workloads and management's expectation that all employees would work through their
18 rest periods.

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

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

permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395—Heat Recovery Period Violations (Against all Defendants)

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

94. At all relevant times herein set forth, the applicable General Industry Safety Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

95. At all relevant times, California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs., Title 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

96. During the relevant time period, Defendants violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because Defendants failed to provide Plaintiff and class members with recovery periods. For example,

1 Plaintiff was never provided a shaded area for recovery while working even though the
2 majority of his work was performed outside and under the sun.

3 97. Defendants also engaged in a company-wide practice and/or policy of not
4 paying recovery period premiums owed when compliant recovery periods were not provided.
5 As a result, Defendants denied Plaintiff and class members recovery periods and failed to pay
6 them recovery period premiums due, in violation of California Labor Code section 226.7 and
7 the applicable General Industry Safety Order.

8 98. Defendants' conduct violates the applicable General Industry Safety Order and
9 California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are
10 therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's
11 regular rate of compensation for each work day that a compliant recovery period was not
12 provided.

13 **SIXTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 15 **Statements and Failure to Maintain Accurate Payroll Records** 16 **(Against all Defendants)**

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

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

23 101. At all relevant times, Defendants have knowingly and intentionally provided
24 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
25 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
26 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
27 applicable hourly rates in effect during the pay period, including rates of pay for overtime
28 wages, and the corresponding number of hours worked at each hourly rate. Specifically,

1 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

12 103. The wage statement deficiencies also include, without limitation, failing to list
13 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
15 for which employees were paid; failing to list the name of the employee and only the last four
16 digits of his or her social security number or an employee identification number other than a
17 social security number; failing to list the name and address of the legal entity that is the
18 employer, and/or failing to state all hours worked as a result of not recording or stating hours
19 worked off-the-clock.

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

1 to record the off-the-clock hours that they worked and improperly rounding Plaintiff's and
2 Subclass members' total hours worked.

3 105. California Labor Code section 1198 provides that the maximum hours of work
4 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
5 set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he
6 employment of any employees for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
8 Wage Order, employers are required to keep accurate time records showing when the
9 employee begins and ends each work period and meal period. During the relevant time
10 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
11 and meal period start and stop times for Plaintiff and Subclass members, in violation of
12 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
13 falsifying Plaintiff's and Subclass members' time records by recording that compliant meal
14 periods were taken regardless of if or when meal periods were actually taken, and thereby
15 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
16 Also, in light of Defendants' failure to provide Plaintiff and Subclass members with second
17 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
18 and end times for second meal periods.

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

23 SEVENTH CAUSE OF ACTION

24 Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon 25 Termination 26 (Against all Defendants)

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

1 108. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay
3 that were not timely paid to Plaintiff and those class members no longer employed by
4 Defendants upon their termination.

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

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

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

23 **EIGHTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 25 **Employment** 26 **(Against all Defendants)**

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

1 113. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay
3 that were not timely paid to Plaintiff and class members during their employment.

4 114. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed. Labor Code section 204 further provides
9 that all wages earned by any person in any employment between the sixteenth (16th) and the
10 last day, inclusive, of any calendar month, other than those wages due upon termination of an
11 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
12 month.

13 115. At all times relevant herein, Labor Code section 204 provides that all wages
14 earned for labor in excess of the normal work period shall be paid no later than the payday for
15 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
16 204 provides that the requirements of this section are deemed satisfied by the payment of
17 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
18 seven (7) calendar days following the close of the payroll period.

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

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

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1 **NINTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11160 Subdivision 5(B)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

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

7 119. California Labor Code section 1198 dictates that no employer may employ an
8 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
9 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
10 fixed by the commission shall be the . . . standard conditions of labor for employees. The
11 employment of any employee . . . under conditions of labor prohibited by the order is
12 unlawful.”

13 120. The applicable IWC Wage Order, California Code of Regulations, Title 8,
14 section 11160(5)(B), provides that “[e]ach workday an employee is required to report to the
15 work site and does report, but is not put to work or is furnished less than half of his/her usual
16 or scheduled day’s work, the employer shall be pay him/her for half the usual or scheduled
17 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
18 employee’s regular rate of pay, which shall not be less than the minimum wage.” The
19 “primary purpose of the reporting time regulation” is “to guarantee at least partial
20 compensation for employees who report to work expecting to work a specified number of
21 hours, and who are deprived of that amount because of inadequate scheduling or lack of
22 proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

23 121. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11160(5)(B), because
25 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
26 work for their usual or scheduled shift but were put to work for less than half of their usual or
27 scheduled day’s work.

28 122. Defendants had a company-wide practice and/or policy of sending Plaintiff and

1 class members home early from their shifts, including before they had worked at least half of
2 their usual or scheduled shift, but would not pay Plaintiff and class members for half of their
3 scheduled shift. For example, Defendants' managers sent Plaintiff home before half of his
4 scheduled shift was over approximately two times per month, but, on information and belief,
5 Plaintiff was only paid for the time he had worked. Although Plaintiff and class members
6 reported to work based on the schedule that was provided to them, Defendants would send
7 them home before they worked at least half of their usual or scheduled shifts. When this
8 occurred, Defendants did not pay Plaintiff and class members for at least half of their
9 scheduled day's work or the minimum reporting time pay.

10 123. Accordingly, Plaintiff and class members were not properly compensated with
11 reporting time pay in violation of California Labor Code section 1198 and California Code of
12 Regulations, Title 8, section 11160(5)(B). Plaintiff and class members are therefore entitled
13 to recover from Defendants unpaid wages and interest.

14 **TENTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 16 **(Against all Defendants)**

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

19 125. At all times herein set forth, California Labor Code section 2802 provides that
20 an employer must reimburse employees for all necessary expenditures and losses incurred by
21 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
22 to prevent employers from passing off their cost of doing business and operating expenses on
23 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
24 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen
25 tools or equipment are required by the employer or are necessary to the performance of a job,
26 such tools and equipment shall be provided and maintained by the employer, except that an
27 employee whose wages are at least two (2) times the minimum wage provided herein may be
28 required to provide and maintain hand tools and equipment customarily required by the trade

1 or craft.”

2 126. First, during the relevant time period, Plaintiff and class members were
3 required to use their personal mobile devices, including, but not limited to, cellular phones,
4 and/or mobile data to carry out their job duties, but Defendants failed to reimburse them for
5 the costs of their work-related mobile device expenses. For example, Plaintiff was required to
6 use his personal cellular phone to navigate to customer sites and to converse with his
7 supervisors about work-related matters. Further, Plaintiff was required to download an
8 “ExakTime” mobile application on his personal mobile device which he used to clock in and
9 out for his shifts and meal periods. Although Defendants required Plaintiff and class members
10 to utilize their personal mobile devices and/or mobile data to carry out their work-related
11 responsibilities, Defendants failed to reimburse them for these costs.

12 127. Second, during the relevant time period, Defendants had a company-wide
13 policy of requiring Plaintiff and class members to utilize their own personal vehicles to carry
14 out company business, but failed to reimburse them for all costs of travel, including mileage.
15 For example, Plaintiff was required to use his personal vehicle and drive to and from various
16 job sites, driving up to 1,000 miles per week. Although Defendants required Plaintiff and
17 class members to use their own personal vehicles to complete their work-related duties,
18 Defendants did not reimburse them for their travel expenses.

19 128. Third, during the relevant time period, Defendants, on a company-wide basis,
20 required Plaintiff and class members to wear special safety shoes such as steel-toed boots,
21 which they were required to wear while at work and necessary for the completion of their
22 work-related duties. Plaintiff spent at least \$250 on five (5) pairs of steel-toed boots during
23 his employment, but was not reimbursed for his costs.

24 129. Defendants could have provided Plaintiff and class members with the actual
25 equipment for use on the job, such as company mobile devices, company vehicles, and steel-
26 toed boots. Or Defendants could have reimbursed employees for their mobile device usage,
27 travel and mileage, and boot expenses. Instead, Defendants passed these operating costs off
28 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)

1 times the minimum wage.

2 130. Defendants' company-wide policy and/or practice of passing on their operating
3 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
4 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
5 business-related expenses and costs.

6 131. Plaintiff and class members are entitled to recover from Defendants their
7 business-related expenses incurred during the course and scope of their employment, plus
8 interest.

9 **ELEVENTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 133. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
16 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
17 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
18 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
19 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12,
20 2810.5, 6401, and 6403.

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

- 23 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
24 Wage Order for Defendants' failure to compensate Plaintiff and other
25 aggrieved employees with all required overtime pay, as alleged herein;
- 26 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198, and the applicable IWC Wage Order for Defendants' failure to
28 compensate Plaintiff and other aggrieved employees with at least

- 1 minimum wages for all hours worked, as alleged herein;
- 2 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
- 3 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
- 4 and other aggrieved employees with meal periods, as alleged herein;
- 5 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 6 applicable IWC Wage Order for Defendants' failure to authorize and
- 7 permit Plaintiff and other aggrieved employees to take rest periods, as
- 8 alleged herein;
- 9 (e) Violation of Labor Code sections 226.7, 516, and 1198 for failure to
- 10 provide heat recovery periods to Plaintiff and other aggrieved
- 11 employees, as alleged herein;
- 12 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 13 IWC Wage Order for failure to provide accurate and complete wage
- 14 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 15 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 16 IWC Wage Order for failure to maintain payroll records, as alleged
- 17 herein;
- 18 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 19 earned wages upon termination, as alleged herein;
- 20 (i) Violation of Labor Code section 204 for failure to pay all earned wages
- 21 during employment, as alleged herein;
- 22 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
- 23 Order for failing to pay reporting time pay to Plaintiff and other
- 24 aggrieved employees, as alleged herein;
- 25 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
- 26 and other aggrieved employees for all business expenses necessarily
- 27 incurred, as alleged herein;
- 28 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to

1 provide written notice of information material to Plaintiff's and other
2 aggrieved employees' employment with Defendants, as set forth below;
3 and

4 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
5 Plaintiff and other aggrieved employees with safety devices and
6 safeguards for the workplace, as set forth below.

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

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

25 137. At all relevant times herein, California Labor Code section 6401 provides that
26 employers must furnish and use safety devices and safeguards, and adopt and use practices,
27 means, methods, operations, and processes which are reasonably adequate to render the
28 employment and place of employment safe and healthy. California Labor Code Section 6401

1 further provides that an employer must do everything reasonably necessary to protect the life,
2 safety, and health of their employees. California Labor Code section 6403(a) requires that
3 employers provide and use safety devices and safeguards reasonably adequate to render the
4 employment and place of employment safe.

5 138. During the relevant time period, as stated above, Defendants failed to provide
6 Plaintiff and other aggrieved employees with personal protective equipment, such as steel-
7 toed boots, to keep them safe in the workplace. Despite the fact that Defendants required
8 Plaintiff and other aggrieved employees to wear certain personal protective equipment,
9 including steel-toed boots, while engaged in their work-related duties, Defendants failed to
10 provide such reasonably necessary equipment to Plaintiff and other aggrieved employees to
11 keep them safe.

12 139. Thus, Defendants' failure to provide Plaintiff and other aggrieved employees
13 with safety devices and safeguards for the workplace violates Labor Code sections 6401 and
14 6403. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
15 pursuant to Labor Code sections 2699(a), (f), and (g).

16 **TWELFTH CAUSE OF ACTION**

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

18 **Unlawful Business Practices**

19 **(Against all Defendants)**

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

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

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

1 meaning of Code of Civil Procedure section 1021.5.

2 143. Defendants' activities, as alleged herein, are violations of California law, and
3 constitute unlawful business acts and practices in violation of California Business &
4 Professions Code sections 17200, *et seq.*

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

- 8 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
9 class members, to work overtime without paying them proper
10 compensation in violation of California Labor Code sections 510 and
11 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (b) Failing to pay at least minimum wage to Plaintiff and class members in
13 violation of California Labor Code sections 1182.12, 1194, 1197,
14 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
17 members in violation of California Labor Code sections 226.7, 512(a),
18 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 19 (d) Failing to authorize and permit Plaintiff and class members to take
20 uninterrupted rest periods in violation of California Labor Code sections
21 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
22 herein;
- 23 (e) Failing to provide recovery periods to Plaintiff and class members in
24 violation of California Labor Code sections 226.7, 516, and 1198,
25 California Code of Regulations, Title 8, section 3395, and the applicable
26 General Industry Safety Order, as alleged herein;
- 27 (f) Failing to provide Plaintiff and class members with accurate wage
28 statements and failing to maintain accurate payroll records in violation

of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

- (g) Failing to timely pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein;
- (j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below; and
- (k) Failing to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment, in violation of California Labor Code sections 6401 and 6403 as set forth below.

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

146. At all relevant times, on information and belief, Defendants failed, on a

1 company-wide basis, to provide written notice to Plaintiff and class members that lists the
2 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
3 to provide Plaintiff and class members with written notice of basic information regarding their
4 employment with Defendants is in violation of California Labor Code section 2810.5.

5 147. At all relevant times herein, California Labor Code section 6401 provides that
6 employers must furnish and use safety devices and safeguards, and adopt and use practices,
7 means, methods, operations, and processes which are reasonably adequate to render the
8 employment and place of employment safe and healthy. California Labor Code Section 6401
9 further provides that an employer must do everything reasonably necessary to protect the life,
10 safety, and health of their employees. California Labor Code section 6403(a) requires that
11 employers provide and use safety devices and safeguards reasonably adequate to render the
12 employment and place of employment safe.

13 148. During the relevant time period, as stated above, Defendants failed to provide
14 Plaintiff and class members with personal protective equipment, such as steel-toed boots, to
15 keep them safe in the workplace. Despite the fact that Defendants required Plaintiff and class
16 members to wear certain personal protective equipment, including steel-toed boots, while
17 engaged in their work-related duties, Defendants failed to provide such reasonably necessary
18 equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to
19 provide Plaintiff and class members with safety devices and safeguards for the workplace
20 violates Labor Code sections 6401 and 6403.

21 149. 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.

25 150. 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 **THIRTEENTH CAUSE OF ACTION**

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

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

9 152. 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.

12 153. 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.

17 154. 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 California 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.*)

28 155. 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.

4 156. 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 California Labor Code section 226.7 withheld and retained by
7 Defendants during a period that commences four years prior to the filing of this complaint; a
8 permanent injunction requiring Defendants to pay all statutory benefits implemented by
9 California Labor Code section 226.7 due to Plaintiff and class members; an award of
10 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other
11 applicable laws; and an award of costs.

12 **REQUEST FOR JURY TRIAL**

13 Plaintiff requests a trial by jury.

14 **PRAYER FOR RELIEF**

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

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

20 **Class Certification**

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

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

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

- 28 6. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 proof;

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

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

5 21. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

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

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

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

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

16 25. For all actual, consequential, and incidental losses and damages, according to
17 proof;

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

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

21 28. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

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

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

26 30. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 226.7, 516, and 1198 and the applicable General Industry Safety Order
28 by willfully failing to provide all recovery periods to Plaintiff and class members;

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

4 32. For all actual, consequential, and incidental losses and damages, according to
5 proof;

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

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

9 35. For attorneys' fees pursuant to California Code of Civil Procedure section
10 1021.5, or as otherwise provided by law; and

11 36. For such other and further relief as the Court may deem equitable and
12 appropriate.

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

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

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

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

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

22 41. For attorneys' fees and costs pursuant to California Labor Code section
23 226(e)(1); and

24 42. For such other and further relief as the Court may deem equitable and
25 appropriate.

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

27 43. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 201 and 202 by willfully failing to pay overtime wages; minimum wages;

meal, rest, and recovery period premiums; and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

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

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

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

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

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

As to the Eighth Cause of Action

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

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

51. For statutory penalties according to proof pursuant to California Labor Code section 210;

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

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

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

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

2 55. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5)(B) by
4 failing to provide Plaintiff and class members with reporting time pay;

5 56. For all actual, consequential and incidental losses and damages, according to
6 proof;

7 57. For pre-judgment interest on any unpaid wages from the date such amounts
8 were due, or as otherwise provided by law; and

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

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

12 59. 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 60. For unpaid business-related expenses and such general and special damages as
16 may be appropriate;

17 61. 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 62. For all actual, consequential, and incidental losses and damages, according to
20 proof;

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

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

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

26 65. 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); 226.7, 516, and 1198 (by failing to provide heat recovery periods);
4 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain
5 accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
6 termination); 204 (by failing to timely pay all earned wages during employment); 1198 and
7 the applicable IWC Wage Order (by failing to provide reporting time pay); 2802 (by failing to
8 reimburse business expenses); 2810.5 (by failing to provide written notice of information
9 material to employment); and 6401 and 6403 (by failing to provide safety devices and
10 safeguards);

11 66. For civil penalties pursuant to the California Labor Code, including sections
12 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
13 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
14 1198, 2802, 2810.5, 6401, and 6403;

15 67. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
17 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
18 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403; and

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

21 **As to the Twelfth Cause of Action**

22 69. That the Court declare, adjudge and decree that Defendants' conduct of failing
23 to provide Plaintiff and class members all overtime wages due to them, failing to provide
24 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
25 class members all meal periods, failing to authorize and permit Plaintiff and class members to
26 take all rest periods, failing to provide Plaintiff and class members recovery periods, failing to
27 provide Plaintiff and class members accurate and complete wage statements, failing to
28 maintain accurate payroll records for Plaintiff and class members, failing to timely pay

1 Plaintiff and class members all earned wages during employment, failing to pay Plaintiff and
2 class members reporting time pay, failing to reimburse Plaintiff and class members for
3 business-related expenses, failing to provide written notice of material terms of employment,
4 and failing to provide safety devices and safeguards constitutes an unlawful business practice
5 in violation of California Business and Professions Code sections 17200, *et seq.*;

6 70. For restitution of unpaid wages to Plaintiff and all class members and
7 prejudgment interest from the day such amounts were due and payable;

8 71. For the appointment of a receiver to receive, manage and distribute any and all
9 funds disgorged from Defendants and determined to have been wrongfully acquired by
10 Defendants as a result of violations of California Business & Professions Code sections
11 17200, *et seq.*;

12 72. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
13 California Code of Civil Procedure section 1021.5; and

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

16 **As to the Thirteenth Cause of Action**

17 74. That the Court declare, adjudge and decree that Defendants' conduct of denying
18 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
19 section 226.7 constitutes an unfair business practice in violation of California Business and
20 Professions Code sections 17200, *et seq.*;

21 75. For restitution of the statutory benefits under California Labor Code section
22 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the
23 day such amounts were due and payable;

24 76. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections
27 17200, *et seq.*;

28 77. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5;

2 78. For pre-judgment and post-judgment interest as provided by law; and

3 79. For such other and further relief as the Court may deem equitable and
4 appropriate.

5

6 Dated: May 17, 2023

Respectfully submitted,

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Capstone Law APC

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By: Roxanna Tabatabaepour

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Orlando Villalba

Helga Hakimi

Roxanna Tabatabaepour

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Ryan Tish

Alexander Wallin

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Attorneys for Plaintiff Willy Barriga

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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

January 6, 2023

VIA ONLINE SUBMISSION

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

Subject: *Willy Barriga v. DRYCO Construction, Inc.*
LWDA Case No. LWDA-CM-927750-23 - AMENDED NOTICE

Dear PAGA Administrator:

This office represents Willy Barriga in connection with his claims under the California Labor Code. Mr. Barriga was an employee of DRYCO CONSTRUCTION, INC. ("DRYCO"). We previously provided notice of Mr. Barriga's claims to the California Labor and Workforce Development Agency ("LWDA") on January 5, 2023, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Barriga's prior LWDA notice and adds an additional claim.

The employer may be contacted directly at the address below:

DRYCO CONSTRUCTION, INC.
42745 BOSCELL ROAD
FREMONT, CA 94538

Mr. Barriga 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. Barriga seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DRYCO 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.

DRYCO employed Mr. Barriga as an hourly paid, non-exempt employee from approximately February 2022 to August 2022. Mr. Barriga worked for DRYCO as a Seal Coat and Stripping Laborer out of its location in Fremont, California. Mr. Barriga typically worked eight (8) or more hours per day and five (5) or more days per week. Mr. Barriga was compensated approximately \$30.00 per hour. His job duties included, without limitation, painting stencils, posting construction

signs, handling thermoplastic paint, assisting construction employees, driving company vehicle to job sites, and loading and unloading company vehicles.

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

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

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

During the relevant period, DRYCO failed to provide Mr. Barriga and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that DRYCO required Mr. Barriga and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, while engaged in their work-related duties, DRYCO failed to provide such reasonably necessary equipment to Mr. Barriga and other aggrieved employees to keep them safe. Thus, DRYCO’s failure to provide Mr. Barriga and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.

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

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Barriga, 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 DRYCO for violations of California Labor Code sections 6401 and 6403.

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

¹ These facts, theories, and claims are based on Mr. Barriga’s experience and counsel’s review of those records currently available relating to Mr. Barriga’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. Barriga reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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

Anthony Castillo
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 "Anthony Castillo", with a stylized flourish at the end.

Anthony Castillo

Copy: DRYCO CONSTRUCTION, INC. (via U.S. Certified Mail)

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



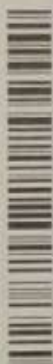
7022 2410 0000 2406 2808

DRYCO CONSTRUCTION, INC.
42745 BOSCELL ROAD
FREMONT, CA 94538

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

DRYCO CONSTRUCTION, INC.
42745 BOSCELL ROAD
FREMONT, CA 94538



9590 9402 1512 5362 2475 63

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2808

COMPLETE THIS SECTION ON DELIVERY

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

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

7022 2410 0000 2406 2808

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

Certified Mail Fee

Postmark

Extra Services & Fees (Check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$

DRYCO CONSTRUCTION, INC.
42745 BOSCELL ROAD
FREMONT, CA 94538

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

DRYCO CONSTRUCTION, INC.
42745 BOSCELL ROAD
FREMONT, CA 94538



9590 9402 1512 5362 2475 63

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2808

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☒ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
 If YES, enter delivery address below:

- ☐ Yes
- ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PROOF OF SERVICE

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

On **May 17, 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:

Marie Trimble Holvick
mholvick@grsm.com
Elizabeth Christie
lchristie@grsm.com
GORDON REES SCULLY MANSUKHANI,
LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415-986-5900
Facsimile: 415-986-8054

Attorneys for Defendant:
DRYCO CONSTRUCTION, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

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

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 17, 2023**, at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature 