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and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual
and on behalf of all employees similarly
situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. CVRI2301534

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff SCOTT ALLEN ATHEY (hereinafter referred to as “Plaintiff”) on behalf of
2 himself and all others similarly situated, and as representative of the State of California and the
3 Labor and Workforce Development Agency (“LWDA”), based upon facts that either have
4 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
5 further investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by WALKER EVANS ENTERPRISES in the
10 State of California during the Class Period. The term “Class Period” is defined from September
11 22, 2021 through the date final judgment is entered. Plaintiff reserves the right to amend this
12 Complaint to reflect a different “Class Period” or “Class” as further discovery is conducted.

13 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
14 against WALKER EVANS ENTERPRISES (“Defendant”) for Defendant’s failure to pay all
15 wages due in violation of Labor Code Sections 204, 510 and 1194, including both regular and
16 overtime wages; failure to provide meal periods or compensation in lieu thereof pursuant to Labor
17 Code Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and
18 Code of Regulations, Title 8, Section 11000 et seq.; failure to provide rest periods or
19 compensation in lieu thereof pursuant to Labor Code Sections 226.7 and 512, the applicable
20 Industrial Welfare Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 et
21 seq.; failure to provide accurate itemized wage statements upon payment of wages pursuant to
22 Labor Code Sections 226, subdivision (a), 1174, and 1175; failure to reimburse for necessary
23 expenditures pursuant to Labor Code Section 2802; and failure to pay wages of terminated or
24 resigned employees pursuant to Labor Code Sections 201, 202, and 203.

25 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
26 relief, and relief under Business and Professions Code Section 17200 et seq. for unfair business
27 practices.

1 4. At all relevant times herein, Defendant has consistently maintained and enforced
2 against Plaintiff and Class the following unlawful practices and policies:

- 3 (a) willfully refusing to pay Plaintiff and Class for all hours worked, including
4 both regular and overtime;
5 (b) willfully refusing to permit Plaintiff and Class from taking meal periods or
6 compensation in lieu thereof;
7 (c) willfully refusing to permit Plaintiff and Class from taking rest periods or
8 compensation in lieu thereof;
9 (d) willfully refusing to furnish to Plaintiff and Class accurate itemized wage
10 statements upon payment of wages;
11 (e) willfully refusing to compensate Plaintiff and certain members of the Class
12 wages and accrued vacation due and owing at the time of Plaintiff and
13 Class Members' employment with Defendant ended; and
14 (f) willfully refusing to reimburse Plaintiff and Class for necessary
15 expenditures.

16 5. On information and belief, Defendant was on actual and constructive notice of
17 the improprieties alleged herein and intentionally refused to rectify their unlawful policies.
18 Defendant's violations, as alleged above, during all relevant times herein were willful and
19 deliberate.

20 6. At all relevant times, Defendant was and is legally responsible for all of the
21 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
22 foregoing paragraphs as the employer of Plaintiff and Class. Further, Defendant is responsible
23 for each of the unlawful acts or omissions complained of herein under the doctrine of
24 "respondeat superior".

25 7. Plaintiff further brings this action as a representative of the State of California
26 and the Labor and Workforce Development Agency ("LWDA") to recover civil penalties
27 pursuant to the Private Attorneys General Act ("PAGA"), Labor Code sections 2698, et seq.,
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1 for violations of numerous Labor Code provisions, including, but not limited to, sections 201-
2 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, 2100-2104, 2109, 2802, 6310, 6400-6404,
3 6401.7, 6409.6, as well as violations of the applicable Wage Order.

4 **JURISDICTION AND VENUE**

5 8. Venue is proper in this judicial district and in the County of Riverside, California
6 because Defendant maintained its location and/or transacted business in this county, the
7 obligations and liability arise in this county, and work was performed by members of the proposed
8 class made the subject of this action in this county.

9 9. The wages, statutory penalties, monetary damages and restitution sought by
10 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
11 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
12 Constitution, article VI, Section 10. The statutes under which this action is brought do not specify
13 any other basis for jurisdiction.

14 10. The California Superior Court has jurisdiction in the matter because the individual
15 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
16 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
17 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of,
18 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
19 federal question at issue as the issues herein are based solely on California statutes and law
20 including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, the Code of
21 Civil Procedure, the Rules of Court, and the Business and Professions Code.

22 **THE PARTIES**

23 **A. Plaintiff**

24 11. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled
25 to compensation for all hours worked, including regular time and overtime compensation, and
26 penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid
27 employee during the Class Period. Specifically, Plaintiff worked as a quality controller for
28 Defendant from approximately April 12, 2021 to February 12, 2022 at Defendant's facility

located at 3240 Trade Center Dr., Riverside, CA 92507. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a California corporation. Defendant manufactures, services and stores wheels and shocks. On information and belief, Defendant was and/or is the employer of Plaintiff and Class during the Class Period. Plaintiff also alleges that Defendant is conducting business in good standing in California.

13. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE Defendants when ascertained.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Class.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendant, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendant.

1 16. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder,
3 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
4 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
5 within the course and scope of such employment and agency, with the express and implied
6 permission, consent, and knowledge, approval and/or ratification of the other Defendant.

7 17. The above Defendant, managing agents, and supervisors aided, abetted, condoned,
8 permitted, approved, authorized and/or ratified the unlawful acts described herein.

9 **ADMINISTRATIVE PREREQUISITE**

10 18. On March 24, 2023, prior to filing this complaint, Plaintiff gave written notice by
11 electronically filing the notice with the Labor Workforce Development Agency (“LWDA”)
12 (LWDA Case No. LWDA-944344-23) and by electronic mail to the Department of Industrial
13 Relations Division of Occupational Safety and Health (“Cal/OSHA”), and by certified mail to
14 Defendant of the specified provisions alleged to have been violated, including the facts and
15 theories to support the alleged violations as required by Labor Code Section 2699.3.

16 19. A true and correct copy of Plaintiff’s letter sent to the LWDA and electronic mail
17 to Cal/OSHA dated March 24, 2023, is attached hereto as “**Exhibit A**”.

18 20. Under Labor Code Section 2699.3 subsection (a), a plaintiff may bring a cause
19 of action under PAGA only after giving notice to the Labor Workforce Development Agency
20 (“LWDA”) and the employer of the Labor Code Sections alleged to have been violated, and
21 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have
22 passed without notice.

23 21. Under Labor Code Section 2699.3 subsection (b), a plaintiff may bring a cause
24 of action alleging health and safety (OSHA) violations only after giving notice to the LWDA
25 and Cal/OSHA and the employer of the Labor Code Sections alleged to have been violated,
26 and after Cal/OSHA inspects or investigates alleged violations or if by the end of period for
27 inspection or investigation provided for in Labor Code section 6317 Cal/OSHA fails to issue a
28 citation.

1 22. More than sixty-five (65) days have passed without notice from the LWDA of its
2 intent to investigate Plaintiff's claims.

3 23. On April 26, 2023, Cal/OSHA issued a letter to Plaintiff's counsel informing that
4 Cal/OSHA sent a letter to Defendant regarding the received complaint and requiring Defendant
5 to investigate the alleged conditions and notify Cal/OSHA no later than fourteen (14) calendar
6 days after receipt of the letter whether the alleged conditions existed and specify if the corrective
7 actions have been taken or the estimated date of the corrective actions to be completed. A true
8 and correct copy of Cal/OSHA letter is attached hereto as "**Exhibit B**".

9 24. As of date of this filing Plaintiff has not received any correspondence from
10 Defendant and/or Cal/OSHA that Defendant accepts or denies any alleged conditions and/or
11 implemented or intends to implement any corrective actions to cure those conditions.

12 25. As of the date of this filing Cal/OSHA has not inspected or investigated the alleged
13 violations and has not issued citation as Plaintiff has not been notified about any inspection and
14 investigation and/or issued citation or cured violations.

15 26. Cal/OSHA did not issue a citation because Cal/OSHA did not notify Plaintiff or
16 Defendant in writing within 14 calendar days of certifying that the employer has corrected the
17 violation as required by § 2699.3(b)(2)(A)(i).

18 27. Cal/OSHA did not inspect or investigate the alleged violation. If Cal/OSHA had
19 investigated or inspected the workplace and found "no violations" were found, then pursuant to
20 Cal. Lab. Code § 6317.7, Cal/OSHA was required to issue a notice to the employer of "no
21 violation". Specifically, Labor Code § 6317.7 states:

22 "If, upon inspection or investigation, the division finds **no violations** pursuant to this
23 chapter, the division with reasonable promptness **shall** issue **a written notice** to the
24 employer specifying the areas inspected and stating that **no violations** were found."

25 28. Because there is no evidence of "inspection or investigation" by Cal/OSHA, the
26 applicable section here is Labor Code § 2699.3(b)(2)(B), which states:

27 "If the division ***fails to inspect or investigate*** the alleged violation as provided by Section
28 6309, ***the provisions of subdivision (c) shall apply*** to the determination of the alleged
violation." *Id.* [Emphasis added].

29 29. Labor Code § 2699.3(c) states:
(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section

2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2)(A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

30. As of the date of this filing Plaintiff has not received any notification from Defendant or Cal/OSHA that Defendant cured any violations.

31. Accordingly, all administrative prerequisites to filing this action have been fulfilled.

GENERAL ALLEGATIONS

32. Plaintiff was employed as a quality controller for Defendant from approximately April 12, 2021 to February 12, 2022.

33. Labor Code Section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of his or her overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

34. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,

1 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
2 month during which the labor was performed, and labor performed between the 16th and the last
3 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
4 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
5 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
6 the wages are paid not more than seven calendar days following the close of the payroll period.
7 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
8 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
9 worked. However, during Class period, Defendant systematically failed and refused to pay the
10 employees all wages due, and failed to pay those wages twice a month, in that employees were
11 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
12 not authorized and permitted by Defendant, and all wages for all hours worked.

13 35. Further, Business and Professions Code Section 17203 provides that any person
14 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
15 Business and Professions Code Section 17204 provides that any person who has suffered actual
16 injury and has lost money or property as a result of the unfair competition may bring an action in
17 a court of competent jurisdiction.

18 36. During all, or a portion of the Class Period, Plaintiff and each member of the Class
19 was employed by Defendant in the State of California.

20 37. Plaintiff and Class Members were non-exempt employees covered under one or
21 more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders,
22 regulations and statutes, and each Class Member was not subject to an exemption for executive,
23 administrative or professional employees, which imposed obligations on the part of Defendant to
24 pay Plaintiff and Class Members lawful overtime compensation.

25 38. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor
26 Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed
27 an obligation on the part of Defendant to pay Plaintiff and Class rest and meal period
28 compensation.

1 39. During the Class Period, Defendant were obligated to pay Plaintiff and Class
2 Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members
3 for all hours worked at the legally mandated wage rates, including all overtime wages.
4 Throughout the Class Period, Plaintiff and Class received additional remuneration in the form
5 of bonuses. However, Defendant has not compensated Plaintiff and Class at the proper
6 overtime and sick pay rate. Defendant did not include the bonuses paid to Plaintiff and Class
7 in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay.
8 Throughout the Class Period, Defendant maintained a policy and practice of requiring Plaintiff
9 and Class to perform work “off-the-clock”. Defendant required Plaintiff and Class to arrive
10 earlier than their scheduled shift or continue working after the scheduled shift. Plaintiff was
11 required to arrive at least 10-15 minutes earlier than his scheduled shift to perform preparatory
12 work prior to clocking in to work such as turning on the computer, setting things to prepare for
13 work. Additionally, Plaintiff and Class were also required to arrive earlier than their scheduled
14 time to stay in line with other employees to use the timeclock machine to clock in to work on
15 time. Defendant failed to compensate Plaintiff and Class for that time. Plaintiff and Class were
16 also required to clock out at the end of their shifts and continue working to clean up the
17 workplace since Plaintiff and Class were not always authorized for overtime work and had to
18 do the cleanup work off-the-clock. Defendant also required Plaintiff and Class to clock out but
19 continue working through meal periods. Plaintiff and Class were required to communicate with
20 their supervisors using their personal cellular telephones for work purposes at home after their
21 scheduled work time. Lastly, Defendant would modify Plaintiff’s and Class Members’ time
22 records to reflect that they worked 5 hour shifts instead of 6 hours by implementing unlawful
23 time shaving as well as to reflect on the records that meal periods were taken when they were
24 not actually taken. In maintaining a practice of not paying all wages owed, Defendant failed to
25 maintain accurate records of the hours Plaintiff and Class worked.
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1 40. During the Class Period, Defendant were obligated to pay Plaintiff and Class
2 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
3 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
4 excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were
5 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
6 hours per workweek but were not paid at the proper overtime rate of pay.

7 41. During the Class Period, Defendant were obligated to provide Plaintiff and Class
8 with a work-free meal period within the first five (5) hours of a shift when the workday was
9 longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute,
10 off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours
11 of their shifts. However, Plaintiff and Class Members were routinely not provided with timely,
12 30-minute off-duty meal periods, and were not permitted and authorized to take uninterrupted
13 rest periods. Moreover, Defendant did not have adequate written policies or practices providing
14 meal periods for Plaintiff and Class, nor did Defendant have adequate policies or practices
15 regarding the timing of meal periods. Defendant also did not allow Plaintiff and Class to leave
16 the warehouse premises, and thus prevented duty-free meal periods for Class. Plaintiff's meal
17 periods were always interrupted by Defendant's owner and co-workers, taken late or missed.
18 Often times Defendant required Plaintiff and Class to clock out for meal periods but continue
19 working so that it appears on the records as they took their meal periods. In those occasions
20 when Plaintiff or Class did not clock out for meal periods as they did not actually take those meal
21 periods, Defendant would manually alter the records of Class to reflect the meal periods which
22 were not actually taken. Accordingly, Defendant's policy and practice was to not provide meal
23 periods to Plaintiff and Class in compliance with California law.

24 42. Additionally, Defendant were obligated to provide Plaintiff and Class Members
25 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
26 day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their
27 shifts. Plaintiff and Class Members were generally precluded from taking rest periods due to
28 Defendant' failure to maintain the rest break policy to provide relief and thereby allow Plaintiff

1 and Class Members the opportunity to take rest breaks. Moreover, Defendant did not have
2 adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class, nor
3 did Defendant have adequate policies or practices regarding the timing of rest periods. Plaintiff
4 and Class would often times miss their first and second rest periods. Most importantly, Plaintiff
5 and Class were not authorized and allowed to leave the warehouse premises to take their rest
6 periods outside. Hence, Plaintiff and Class were prevented from taking duty-free rest periods.
7 Accordingly, Defendant's policy and practice was for Plaintiff and Class to work through rest
8 periods and to not authorize or permit them to take any rest periods.

9 43. Further, due to the pressure from Defendant and failure to maintain an adequate
10 policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not
11 authorized and permitted to take a second rest period, on shifts exceeding six hours of work,
12 and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v.*
13 *Superior Court*, 53 Cal.4th 1004, 1030 (2012). "Employees are entitled to 10 minutes rest for
14 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
15 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

16 44. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
17 one (1) hour's pay at the employees' regular rate of pay as premium compensation for
18 Defendant's failure to provide lawful thirty (30) minute, off-duty meal periods and failure to
19 provide lawful ten (10) minute rest periods within the statutory time frames.

20 45. Defendant also failed to indemnify Plaintiff and Class Members all necessary
21 expenditures incurred in direct discharge of their duties. During the Class Period, Plaintiff and
22 Class were required to use their personal cell phones for work to receive and make work related
23 calls and receive work related text messages from supervisors, managers and co-workers. Further,
24 Plaintiff and Class were required to use their personal vehicles for work to drive to Defendant's
25 second location to pick up supplies. Plaintiff and Class were also required to purchase tools and
26 safety equipment necessary to perform their work. Defendant failed to reimburse Plaintiff and
27 Class for usage of personal cell phones, mileage for using their personal vehicles as well as tools.
28 Plaintiff and Class incurred these substantial expenses as a direct result of performing their job

1 duties for Defendant, and Defendant have failed to indemnify Plaintiff and Class for these
2 employment-related expenses.

3 46. Defendant continues to employ non-exempt, hourly-paid employees within
4 California.

5 47. Plaintiff and Class Members primarily performed non-exempt work, often in
6 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
7 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
8 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
9 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
10 statutes.

11 48. During the Class Period, Defendant required Plaintiff and Class Members to work
12 regular hours, off the clock hours, and overtime hours without lawful compensation in violation
13 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
14 and refused, and continue to fail and refuse to pay compensation for all hours worked, including
15 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and
16 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination
17 of employment to Plaintiff and affected Class Members.

18 49. Class Members who ended their employment with Defendant during the Class
19 Period but were not paid the above due compensation for all hours worked timely upon the
20 termination of their employment as required by Labor Code Sections 201, 202, and 203 are
21 entitled to penalties as provided by Labor Code Section 203.

22 50. During the Class Period, Defendant failed to furnish Plaintiff and Class with
23 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
24 wages earned (including correct hours worked, correct wages earned for hours worked, correct
25 overtime hours worked, correct wages for meal periods that were not provided in accordance
26 with California law, correct wages for rest periods that were not authorized and permitted to
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1 take in accordance with California law). As a result of these violations of California Labor
2 Code § 226(a), Plaintiff and Class suffered injury because, among other things:

- 3 (a) the violations led them to believe that they were not entitled to be paid
4 minimum wages, overtime wages, meal period premium wages, and rest
5 period premium wages to which they were entitled, even though they were
6 entitled;
- 7 (b) the violations led them to believe that they had been paid the minimum,
8 overtime, meal period premium, and rest period premium wages, even
9 though they had not been;
- 10 (c) the violations led them to believe they were not entitled to be paid overtime,
11 meal period premium, and rest period premium wages at the correct
12 California rate even though they were;
- 13 (d) the violations led them to believe they had been paid overtime, meal period
14 premium, and rest period premium wages at the correct California rate even
15 though they had not been;
- 16 (e) the violations hindered them from determining the amounts of overtime,
17 meal period premium, and rest period premium owed to them;
- 18 (f) in connection with their employment before and during this action, and in
19 connection with prosecuting this action, the violations caused them to have
20 to perform mathematical computations to determine the amounts of wages
21 owed to them, computations they would not have to make if the wage
22 statements contained the required accurate information;
- 23 (g) by understating the wages truly due them, the violations caused them to lose
24 entitlement and/or accrual of the full amount of Social Security, disability,
25 unemployment, and other governmental benefits;
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1 (h) the wage statements inaccurately understated the wages, hours, and wages
2 rates to which Plaintiff and Class were entitled, and Plaintiff and Class were
3 paid less than the wages and wage rates to which they were entitled.

4 Thus, Plaintiff and Class are owed the amounts provided for in California Labor Code §
5 226(e), including actual damages.

6 51. Defendant knew or should have known that Plaintiff and Class members were
7 entitled to receive accurate wage statements, which would include meal break premiums, and/or
8 rest break premiums, as required by Labor Code 226.

9 52. Defendant knew or should have known that Plaintiff and Class Members were
10 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
11 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
12 violation of the Labor Code.

13 53. In accordance with the Section 15 (a) of the applicable wage order issued by the
14 Industrial Welfare Commission (“IWC”), the temperature maintained in each work area shall
15 provide reasonable comfort consistent with industry-wide standards for the nature of the process
16 and the work performed. Further Section 15 (b) of IWC states that if excessive heat or humidity
17 is created by the work process, the employer shall take all feasible means to reduce such excessive
18 heat or humidity to a degree providing reasonable comfort. However, Defendant has not taken
19 feasible means to reduce such excessive heat. Defendant did not have proper air conditioning and
20 air ventilation, and temperature during summer times in the warehouse became as hot as 100
21 degrees Fahrenheit. As a result, Plaintiff and Class suffered injuries at their workplace due to the
22 excessive heat.

23 54. Labor Code Sections 6400-6404 provide that every employer shall furnish
24 employment and a place of employment that is safe and healthful for the employees therein.
25 However, Defendant failed to furnish employees with safety devices and implement necessary
26 processes and practices necessary to prevent exposure to COVID-2019. Defendant failed to
27 necessitate the use of and provide the appropriate personal protective equipment. Defendant
28 failed to establish infection prevention measures such as encouraging sick employees to stay

1 home, implementing social distancing protocols, or establishing procedures to routinely disinfect
2 and clean commonly used surfaces. Defendant failed to take safety measures for COVID pre-
3 screening prior to entering the premises. Defendant failed to take individual measures and
4 screening to provide illness prevention training. Defendant failed to provide all the protective
5 equipment necessary for the work performed in the warehouse. Defendant failed to provide
6 training to employees on how to use personal protective equipment and safety resources.
7 Defendant failed to provide training materials and conduct training for employees regarding
8 health and safety measures and usage and maintenance of equipment. As a result, employees were
9 exposed to the risk of injuries. There was an incident when Defendant's employee injured her
10 finger as she was not trained how to use the press equipment. Defendant failed to establish proper
11 safety procedures and take proper health and safety measures. Defendant used to keep racks in
12 the warehouse which were not bolted down exposing employees to the risk of injuries. Defendant
13 also exposed employees to work in the areas that contained acetone. Defendant mandated
14 employees to wash the shocks in acetone and alcohol and blow dry them in the warehouse with
15 no ventilation and air conditioning. As a result, employees had chemical burns caused by the
16 acetone. Defendant also failed to establish and properly supervise employees on enforcement of
17 safety and injuries reporting procedures.

18 55. Labor Code Section 6401.7 provides that every employer shall establish,
19 implement, and maintain an effective injury prevention program. Defendant failed to establish and
20 maintain a program that will prevent Plaintiff and Class from injuries that might be caused by
21 exposure to COVID-2019 as well as other health and safety hazards in the workplace. Specifically,
22 Defendant failed to establish adequate injury prevention program as well infection prevention
23 measures such as properly training employees how to use safety equipment, reporting on hazards,
24 encouraging sick employees who were exposed to COVID to stay home, implementing social
25 distancing protocols, or establishing procedures to routinely disinfect and clean commonly used
26 surfaces.

27 56. Labor Code Section 6409.6 provides that if an employer or representative of the
28 employer receives a notice of potential exposure to COVID-19, the employer shall take all the

1 actions within one business day of the notice of potential exposure provided in the same Labor
2 Code Section. Despite the fact that, based on information and belief, Defendant was notified of
3 employees who were infected with COVID-2019 and other employees were exposed to COVID-
4 2019, Defendant failed to provide any notice to Plaintiff and Class about exposure to COVID-
5 2019 and failed to take necessary measures to prevent exposure of Class to COVID-2019. In
6 opposite, Plaintiff, who contracted COVID, was required to arrive to work and was disciplined for
7 staying home for three days when he tested positive for COVID.

8 57. California Code of Regulations title 8, Section 3395(d) provides that shade shall
9 be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature
10 in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or
11 more areas with shade at all times while employees are present that are either open to the air or
12 provided with ventilation or cooling. California Code of Regulations. title 8, Section 3395(d) also
13 provides that employees shall be allowed and encouraged to take a preventative cool-down rest
14 in the shade when they feel the need to do so to protect themselves from overheating. Such access
15 to shade shall be permitted at all times. California Code of Regulations title 8, Section 3395(i)
16 provides that the employer shall establish, implement, and maintain, an effective heat illness
17 prevention plan. However, Defendant failed to maintain proper ventilation and air conditioning
18 at the warehouse and has not taken feasible means to sufficiently reduce such excessive heat. The
19 temperature in the warehouse was often times more than 100 degrees Fahrenheit. As a result,
20 Plaintiff and Class suffered injuries at their workplace due to the excessive heat, and Defendant
21 failed to provide shade and to establish and maintain a heat illness prevention plan.

22 58. Labor Code section 1198 makes it illegal to employ an employee under conditions
23 of labor that are prohibited by the applicable wage order. California Labor Code section 1198
24 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . .
25 standard conditions of labor for employees. The employment of any employee . . . under
26 conditions of labor prohibited by the order is unlawful. California Code of Regulations, Title 8,
27 section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable
28 seats when the nature of the work reasonably permits the use of seats."

59. Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. However, Plaintiff and Class Members were not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it would not interfere with the performance of their duties, nor were they provided with suitable seats.

60. Labor Code Section 6310 provides that no person shall discharge or in any manner discriminate against any employee who reports health and safety violations of the employer. However, Defendant, on information and belief, retaliated against Class for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

61. Labor Code Section 2100 provides that each employee of a warehouse that employs 100 employees, or a group of related warehouses that employ at least 1,000 employees may request and receive a written description of applicable quotas and work speed data. In fact, employers must give written quota descriptions to all new hires and current employees upon request. Further, pursuant to Labor Code Section 2101 an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time to and from bathrooms), or compliance with occupational health and safety standards. Here, Defendant failed to provide a written description of applicable quotas and work speed data to employees.

CLASS ALLEGATIONS

62. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed of and defined as follows:

- 1 (a) All persons who are employed or have been employed by Defendant in the
2 State of California, and who, from September 22, 2021 to the present, have
3 worked as non-exempt employees and were not paid all wages owed, including
4 but not limited to the legally requisite regular time rate, overtime rate and/or
5 double-time rate as specifically described herein;
- 6 (b) All persons who are employed or have been employed by Defendant in the
7 State of California, and who, from September 22, 2021 to the present, have
8 worked as non-exempt employees and have not been provided a meal period
9 for shifts in excess of five (5) hours within the first five (5) hours such shifts,
10 and were not provided one (1) hour's pay for each day during which a lawful
11 meal period was not provided;
- 12 (c) All persons who are employed or have been employed by Defendant in the
13 State of California, and who, from September 22, 2021 to the present, have
14 worked as non-exempt employees and have not been provided a rest period for
15 every four (4) hours, or major fraction thereof, worked per day, and were not
16 provided compensation of one (1) hour's pay for each day on which such rest
17 period(s) was not provided;
- 18 (d) All persons who are employed or have been employed by Defendant in the
19 State of California, and who, from September 22, 2021 to the present, have
20 worked as non-exempt employees and have not been reimbursed expenditures
21 in discharge of their duties;
- 22 (e) All persons who are employed or have been employed by Defendant in the
23 State of California, and who, from September 22, 2021 to the present, have
24 worked as non-exempt employees and have been terminated or resigned, and
25 have not been paid wages pursuant to Labor Code Section 203 and are owed
26 restitution and waiting time penalties for unpaid wages;
- 27 (f) All persons who are employed or have been employed by Defendant in the
28 State of California, and who, within the one (1) year of the filing of this

Complaint to the present have worked as non-exempt employees and were not provided an accurate payroll record or wage statement as required under Labor Code Sections 226 and 1174;

(g) All persons who are employed or have been employed by Defendant in the State of California, and who, from September 22, 2021 to the present, have worked as non-exempt employees and were subjected to unlawful and unfair business practices within the meaning of California's Unfair Competition Law and who suffered injury, including lost money, as a result of Defendant's unlawful and unfair business practices.

63. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class. Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.

64. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure Section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

65. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure Section 382 because:

- (a) The questions of law and fact common to Class predominate over any question affecting only individual class members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the Class members;
- (c) Class is so numerous that it is impractical to bring all members of the Class before the Court;
- (d) Plaintiff and Class Members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other

1 improprieties and in obtaining adequate compensation for the damages
2 and injuries which Defendant's actions have inflicted upon Class;

3 (f) There is a community of interest in ensuring that the combined assets and
4 available insurance of the Defendant are sufficient to adequately
5 compensate Class Members for the injuries sustained;

6 (g) Without class certification, the prosecution of separate actions by
7 individual members of the Class would create a risk of:

8 (1) Inconsistent or varying adjudications with respect to individual
9 members of the Class which would establish an incompatible
10 standard of conduct for Defendant; and/or

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

17 (h) Defendant have acted or refused to act on grounds generally applicable to
18 Class, thereby making final injunctive relief appropriate with respect to
19 Class as a whole.

20 66. There is a well-defined community of interest in the litigation and Class is
21 readily ascertainable:

22 (a) Numerosity: The members of Class (and each subclass, if any) are so
23 numerous that joinder of all members would be unfeasible and impractical.
24 The membership of the entire Class is unknown to Plaintiff at this time,
25 however, the Class is estimated to be greater than 80 individuals and the
26 identity of such membership is readily ascertainable by inspection of
27 Defendant's records.
28

1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
2 interests of each Class Member with whom there is a shared, well-defined
3 community of interest, and Plaintiff's claims (or defenses, if any) are typical
4 of all Class Members' claims as demonstrated herein.

5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
6 the interests of each Class Member with whom there is a shared, well-
7 defined community of interest and typicality of claims, as demonstrated
8 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
9 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
10 rules governing class action discovery, certification, and settlement.
11 Plaintiff has incurred, and throughout the duration of this action, will
12 continue to incur costs and attorneys' fees that have been, are, and will be
13 necessarily expended for the prosecution of this action for the substantial
14 benefit of each class member.
15

16 (d) Superiority: A Class Action is superior to other available methods for the
17 fair and efficient adjudication of the controversy, including consideration of:

- 18 1. The interests of the members of the Class in individually
19 controlling the prosecution or defense of separate actions;
- 20 2. The extent and nature of any litigation concerning the
21 controversy already commenced by or against members of the
22 Class;
- 23 3. The desirability or undesirability of concentrating the
24 litigation of the claims in the particular forum; and
- 25 4. The difficulties likely to be encountered in the management of
26 a class action.

27 (e) Public Policy Considerations: The public policy of the State of California is
28

1 to resolve the California Labor Code claims of many employees through a
2 class action. Indeed, current employees are often afraid to assert their rights
3 out of fear of direct or indirect retaliation. Former employees are also
4 fearful of bringing actions because they believe their former employers
5 might damage their future endeavors through negative references and/or
6 other means. Class actions provide the class members who are not named in
7 the complaint with a type of anonymity that allows for the vindication of
8 their rights at the same time as their privacy is protected.

9 67. Plaintiff contemplates the eventual issuance of notice to the proposed members of
10 the Class that would set forth the subject and nature of the instant action. Defendant's own
11 business records may be utilized for assistance in the preparation and issuance of the
12 contemplated notices. To the extent that any further notices may be required, Plaintiff would
13 contemplate the use of additional techniques and forms commonly used in class actions, such as
14 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
15 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay All Wages for All Hours Worked**
18 **(Against Defendant, DOES 1 through 50, and each of them)**

19 68. Plaintiff and Class Members re-allege and incorporate by reference all preceding
20 paragraphs of this complaint as though fully set forth herein.

21 69. Labor Code Section 510, subdivision (a) states in pertinent part: "Any work in
22 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
23 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
24 any employee."

25 70. Labor Code Section 1194, subdivision (a) states: "Notwithstanding any agreement
26 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to recover in a civil action the
28

1 unpaid balance of the full amount of this minimum wage or overtime compensation, including
2 interest thereon, reasonable attorney's fees, and costs of suit.”

3 71. Further, pursuant to Labor Code Section 1197, payment of less than the minimum
4 wage fixed by the Labor Commission is unlawful.

5 72. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer
6 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
7 IWC Wage Order(s).

8 73. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
9 Class Members for all hours worked, meaning the time during which an employee is subject to
10 the control of an employer, including all the time the employee is suffered or permitted to work,
11 whether or not required to do so.

12 74. Pursuant to Labor Code Section 551 that every person employed in any
13 occupation of labor is entitled to one day’s rest in seven. Additionally, Labor Code Section 552
14 prohibits employers from requiring employees to work more than six consecutive days without a
15 day of rest. Defendant scheduled Plaintiff and Class Members to work six (6) or more hours per
16 day and more than seven (7) consecutive days in a workweek in violation of Labor Code
17 requirements.

18 75. During the Class Period, Defendant was obligated to pay Plaintiff and Class
19 Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members
20 for all hours worked at the legally mandated wage rates. Throughout the Class Period, Plaintiff
21 and Class received additional remuneration in the form of bonuses. However, Defendant has
22 not compensated Plaintiff and Class at the proper overtime and sick pay rate. Defendant did
23 not include the bonuses paid to Plaintiff and Class in the regular rate of pay for purposes of
24 calculating overtime rate of pay and sick pay. Throughout the Class Period, Defendant
25 maintained a policy and practice of requiring Plaintiff and Class to perform work “off-the-
26 clock”. Defendant required Plaintiff and Class to arrive earlier than their scheduled shift or
27 continue working after the scheduled shift. Plaintiff was required to arrive at least 10-15
28 minutes earlier than his scheduled shift to perform preparatory work prior to clocking in to

1 work such as turning on the computer, setting things to prepare for work. Additionally,
2 Plaintiff and Class were also required to arrive earlier than their scheduled time to stay in line
3 with other employees to use the timeclock machine to clock in to work on time. Defendant
4 failed to compensate Plaintiff and Class for that time. Plaintiff and Class were also required to
5 clock out at the end of their shifts and continue working to clean up the workplace since
6 Plaintiff and Class were not always authorized for overtime work and had to do the cleanup
7 work off-the-clock. Defendant also required Plaintiff and Class to clock out but continue
8 working through meal periods. Plaintiff and Class were required to communicate with their
9 supervisors using their personal cellular telephones for work purposes at home after their
10 scheduled work time. Lastly, Defendant would modify Plaintiff's and Class Members' time
11 records to reflect that they worked 5 hour shifts instead of 6 hours by implementing unlawful
12 time shaving as well as to reflect on the records that meal periods were taken when they were
13 not actually taken. In maintaining a practice of not paying all wages owed, Defendant failed to
14 maintain accurate records of the hours Plaintiff and Class worked.

15 76. Plaintiff and Class Members were required to work overtime in excess of eight (8)
16 hours per workday and in excess of forty (40) hours per workweek, but were not paid at the proper
17 overtime rate of pay.

18 77. Labor Code Section 204 requires employers to pay employees all earned wages
19 two times per month on days designated in advance by the employer as regular paydays.
20 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,
21 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the
22 month during which the labor was performed, and labor performed between the 16th and the last
23 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
24 following month. Pursuant to Labor Code Section 204 (d) the requirements of this Section shall
25 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
26 the wages are paid not more than seven calendar days following the close of the payroll period.
27 Plaintiff and Class were also entitled to be paid twice a month at their regular rates, including all
28 meal period premium wages owed, rest period premium wages owed, and wages owed for hours

1 worked. However, during Class period, Defendant systematically failed and refused to pay the
2 employees all wages due, and failed to pay those wages twice a month, in that employees were
3 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
4 not authorized and permitted by Defendant, and all wages for all hours worked.

5 78. Defendant's pattern, practice and uniform administration of corporate policy
6 regarding illegal employee compensation as described herein is unlawful and creates an
7 entitlement, pursuant to Labor Code Section 218, to recovery by Plaintiff and the members of the
8 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
9 appropriate rate.

10 79. Pursuant to Labor Code Section 1194.2(a) (which provides that in any action under
11 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members
12 of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
13 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
14 unpaid and interest thereon.

15 80. That calculation of individual damages for Class Members may at some point be
16 required does not foreclose the possibility of taking common evidence on questions regarding
17 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*
18 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
19 30 Cal.3d 256).

20 81. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
21 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

22 82. Pursuant to Labor Code Sections 218.5 and/or 1194, Class Members request that
23 the Court award reasonable attorneys' fees and costs incurred by them in this action.

24 **SECOND CAUSE OF ACTION**

25 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

26 **(Against Defendant, DOES 1 through 50, and each of them)**

27 83. Plaintiff and Class Members re-allege and incorporate by reference all preceding
28 paragraphs of this complaint as though fully set forth herein.

1 84. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
2 person for a work period of more than five (5) hours without providing a meal period of not less
3 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
4 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
5 minutes.

6 85. Labor Code Section 226.7 provides that if an employer fails to provide an
7 employee a meal period in accordance with this Section, the employer shall pay the employee one
8 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
9 period is not provided in accordance with this Section.

10 86. Defendant failed to schedule Plaintiff and Class Members in a manner as to
11 reasonably ensure that Plaintiff and Class Members could take such meal periods within the
12 statutory timeframe. As a result, Plaintiff and Class were often forced to forego their meal
13 periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their
14 shifts. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff
15 and Class Members in violation of Labor Code Sections 226.7 and 512, and other regulations and
16 statutes.

17 87. At all times relevant hereto, Plaintiff and Class have worked more than five (5)
18 hours in a workday.

19 88. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class
20 Members in a manner so as to reasonably provide work-free meal periods in accordance with
21 Labor Code Sections 226.7 and 512.

22 89. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such
23 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
24 and Class Members have suffered, and will continue to suffer, damages in an amount which is
25 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
26 ascertained according to proof at trial.

27 90. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
28 period compensation pursuant to Labor Code Section 226.7 for the four (4) years prior to filing

1 this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as
2 provided by the Labor Code and/or other statutes.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

5 **(Against Defendant, DOES 1 through 50, and each of them)**

6 91. Plaintiff and Class Members re-allege and incorporate by reference all preceding
7 paragraphs of this complaint as though fully set forth herein.

8 92. The IWC Wage Orders and Labor Code Section 226.7 provides that employers
9 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
10 time per four (4) work hours or major fraction thereof.

11 93. Labor Code Section 226.7, subdivision (b) provides that if an employer fails to
12 provide an employee rest period in accordance with this Section, the employer shall pay the
13 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
14 that the rest period is not provided.

15 94. During the Class Period, Defendant did not provide Plaintiff and Class Members
16 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
17 Plaintiff and Class Members were not provided lawful rest periods.

18 95. Defendant failed and/or refused to implement a policy by which Plaintiff and Class
19 Members could receive rest periods and/or work free rest periods. By and through its actions,
20 Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in
21 violation of Labor Code Sections 226.7 and 512.

22 96. At all times relevant hereto, Plaintiff and Class have worked more than four (4)
23 hours in a workday.

24 97. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
25 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
26 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
27 this Court and which will be ascertained according to proof at trial.

1 98. Plaintiff, individually and on behalf of employees similarly situated, requests
2 recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years
3 prior to filing this Complaint, as well as the assessment of any statutory penalties against
4 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Provide Accurate Itemized Wage Statements**
7 **(Against Defendant, DOES 1 through 50, and each of them)**

8 99. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
9 of this complaint as though fully set forth herein.

10 100. Labor Code Section 1174, subdivision (d) requires an employer to keep at a central
11 location in California, or at the plant or establishment at which the employee is employed, payroll
12 records showing the hours worked daily by, and the wages paid to, each employee.

13 101. Labor Code Section 226, subdivision (a) requires an employer to provide
14 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
15 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
16 statement in writing showing

17 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
18 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which
19 the employee is paid, (7) the name of the employee and only the last four
20 digits of his or her social security number or an employee identification
21 number other than a social security number, (8) the name and address of the
22 legal entity that is the employer . . . , and (9) all applicable hourly rates in
23 effect during the pay period and corresponding number of hours worked at
24 each hourly rate by the employee

25 102. Moreover, the IWC Wage Orders require that every employer shall keep accurate
26 information with respect to each employee, including time records showing when each employee
27 begins and ends each work period, the total daily hours worked by each employee and the total
28 hours worked in each payroll period, and applicable rates of pay.

1 103. Plaintiff is informed and believes that Defendant willfully and intentionally failed
2 to make and/or keep records which accurately reflect the hours worked by Plaintiff and Class.
3 Specifically, Plaintiff believes that Defendant's records do not accurately reflect when Plaintiff
4 and Class worked during their meal and rest periods and/or took untimely meal periods or worked
5 for hours not paid. Defendant also failed to include an hourly rate which is a blatant violation of
6 the Labor Code.

7 104. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
8 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
9 the total hours worked by the employee and the applicable hourly overtime rates, causing the
10 employee injury, then the employee is entitled to recover the greater of all actual damages or
11 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
12 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
13 that Defendant willfully failed to make or keep accurate records for Plaintiff and Class.

14 105. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
15 records, as described above, violated Labor Code Section 1174, subdivision (d) and Section 226,
16 subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code Section 2699,
17 subdivision (f)(2), Plaintiff and Class are entitled to penalties of \$100.00 and for the initial
18 violation and \$200.00 for each subsequent violation for every pay period during which these
19 records and information were not kept by Defendant.

20 106. Plaintiff is informed and believes that Defendant's failure to keep and maintain
21 accurate records and information, as described above, was willful, and Plaintiff and Class are
22 entitled to statutory penalties pursuant to Labor Code Section 1174.5.

23 **FIFTH CAUSE OF ACTION**

24 **Failure to Pay Wages upon Termination of Employment**

25 **(Against Defendant, DOES 1 through 50, and each of them)**

26 107. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
27 of this complaint as though fully set forth herein.
28

108. Plaintiff's employment with Defendant ended on or about February 22, 2023. Plaintiff and certain Class who ended their employment with Defendant during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code Sections 201 through 203. Plaintiff is also entitled to meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

109. Plaintiff and Class were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law as a result of Defendant's illegal rounding practice.

110. To date, Plaintiff and Class Members who ended their employment with Defendant during the Class Period have not been compensated for all hours worked.

111. Plaintiff and the affected Class Members seek the payment of penalties pursuant to Labor Code Section 203, according to proof.

112. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code Section 1194, and prejudgment interest.

SIXTH CAUSE OF ACTION

Failure to Reimburse for Necessary Business Expenditures

(Against Defendant, DOES 1 through 50, and each of them)

113. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

114. California Labor Code §2802, states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

115. Plaintiff and Class were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties. Specifically, During the Class Period, Plaintiff and Class were required to use their personal cell phones for work to receive and make work related calls and receive work related text messages from supervisors, managers and co-

workers. Further, Plaintiff and Class were required to use their personal vehicles for work to drive to Defendant's second location to pick up supplies. Plaintiff and Class were also required to purchase tools and safety equipment necessary to perform their work. Defendant failed to reimburse Plaintiff and Class for usage of personal cell phones, mileage for using their personal vehicles as well as tools. Plaintiff and Class incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and Class for these employment-related expenses.

116. Defendant knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Class.

117. Defendant had a corporate practice and policy of requiring Plaintiff and Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and Class for necessary expenditures, specifically requiring Plaintiff and Class to use their personal cell phones, vehicles for work and to purchase tools.

118. Accordingly, Plaintiff and Class are entitled to an award of "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees and interest.

SEVENTH CAUSE OF ACTION

Unfair Business Practices

(Against Defendant, DOES 1 through 50, and each of them)

119. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

120. Business and Professions Code Section 17200 et seq. (also referred to herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

121. Business and Professions Code Section 17204 allows "a person who has suffered injury in fact and has lost money or property as a result of the unfair competition" to prosecute a civil action for violation of the Unfair Competition Law ("UCL").

122. Labor Code Section 90.5, subdivision (a) states that it is the public policy of

1 California to vigorously enforce minimum labor standards in order to ensure employees are not
2 required to work under substandard and unlawful conditions, and to protect employers who
3 comply with the law from those who attempt to gain competitive advantage at the expense of their
4 workers by failing to comply with minimum labor standards.

5 123. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
6 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
7 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
8 business practices and acts described in this Complaint including but not limited to violations of
9 Labor Code Sections 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, 2100-2104, 2802,
10 6310, 6400-6404, 6401.7, 6409.6 as well as other statutes.

11 124. The violations of these laws and regulations, as well as of the fundamental
12 California public policies protecting workers, serve as unlawful predicate acts and practices for
13 purposes of Business and Professions Code Section 17200 et seq.

14 125. The acts and practices described above constitute unfair, unlawful and fraudulent
15 business practices, and unfair competition, within the meaning of Business and Professions Code
16 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
17 similarly situated employees to labor for many consecutive hours without receiving the meal and
18 rest periods and overtime compensation to which they are entitled by law, while enabling
19 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

20 126. As a result of Defendant's acts, Plaintiff and Class Members have suffered injury
21 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
22 hours worked.

23 127. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
24 and Class have suffered lost wages in an amount to be proven at trial.

25 128. Business and Professions Code Section 17203 provides that a court may make
26 such orders or judgments as may be necessary to prevent the use or employment by any person
27 of any practice which constitutes unfair competition. Injunctive relief is necessary and
28 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts

1 and business practices alleged above.

2 129. Business and Professions Code Section 17203 provides that the Court may restore
3 to any person in interest any money or property that may have been acquired by means of such
4 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
5 Professions Code Section 17203 for all wages and payments unlawfully withheld from
6 employees, including the fair value of the meal and rest periods taken away from them during the
7 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
8 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
9 obedience to the directions of the employer.

10 130. Business and Professions Code Section 17202 provides, “Notwithstanding Section
11 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
12 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
13 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
14 Section 17202.

15 131. Plaintiff’s success in this action will enforce important rights affecting public
16 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
17 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
18 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

19 132. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
20 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
21 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
22 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
23 Code of Civil Procedure Section 1021.5 and otherwise.

24 **EIGHTH CAUSE OF ACTION**

25 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***
26 **(Against Defendants, DOES 1 through 50, and each of them)**

27 133. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
28 as if fully alleged herein.

1 134. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
2 General Act of 2004 (“PAGA.”) (Labor Code sections 2698 et seq.) for which Defendant is
3 liable as a result of violations of the Labor Code, as set forth in this First Amended Complaint
4 and the letter to LWDA attached hereto as **Exhibit A** and incorporated by reference including,
5 but not limited to, violations of Labor Code Sections 201-203, 204, 226, 226.7, 510, 512, 1174,
6 1194, 1198, 2100-2104, 2109, 2802, 6310, 6400-6404, 6401.7, 6409.6, as well as violations of
7 the applicable Wage Order Sections 14, 15 and other applicable sections.

8 135. PAGA permits an “aggrieved employee” to recover penalties on behalf of
9 himself/herself and other employees subject to violations of the Labor Code, including violations
10 of sections 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, 2100-2104, 2109, 2802, 6310,
11 6400-6404, 6401.7, 6409.6, as well as with the applicable Wage Order.

12 136. Plaintiff is informed and believes Defendants at all relevant times employed one
13 or more employees.

14 137. For those code sections that provide for the recovery of civil penalties, Plaintiff
15 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
16 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
17 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
18 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
19 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

20 138. Additionally, for violations of the Labor Code Sections 6310, 6400-6404, 6401.7,
21 6409.6 California Labor Code Sections 6423, 6427, 6428 and 6429 provide civil penalties against
22 an employer that commits violations of the Occupational Safety and Health Act.

23 139. The California Corporate Criminal Liability Act provides criminal penalties for
24 corporate employers and their managers who fail to inform Cal/OSHA in writing within a
25 specified period of time of any “serious concealed danger,” as defined in the Act, that may exist
26 in the workplace. See Penal Code § 387.

27 140. Section 2699, subdivision (a) provides that civil penalties may be “recovered
28 through a civil action brought by an aggrieved employee on behalf of himself or herself and other

1 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
2 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
3 award of reasonable attorneys’ fees and costs.

4 141. California Labor Code § 6407 states that “Every employer and every employee
5 shall comply with occupational safety and health standards, with Section 25910 of the Health and
6 Safety Code, and with all rules, regulations, and orders pursuant to this division which are
7 applicable to his own actions and conduct.”

8 142. Since specific standards to cover every possible safety situation would be
9 impossible to formulate, Cal/OSHA impose a general duty on employers to maintain conditions
10 of employment and a place of employment free from recognized hazards that may cause injury
11 or death to workers. Defendant has failed to furnish employment and a place of employment
12 which is safe and healthful for its employees; thereby, violating, among others, Lab Code §§ 6400
13 and 6401.

14 143. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
15 to civil penalties, attorneys’ fees and costs, according to proof.

16
17 **PRAYER FOR RELIEF**

18 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
19 the class claims, prays for relief and judgment against Defendant as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action with respect to the First, Second,
22 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;
23 2. That Plaintiff be appointed as the representative of the Class; and
24 3. That counsel for Plaintiff be appointed as Class Counsel.

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

- 26 4. That the Court declare, adjudge and decree that Defendant violated California
27 Labor Code §§ 204, 510, 551, 552, 1194, 1198 and applicable IWC Wage Orders by
28

1 willfully failing to pay all minimum wages due;

2 5. For general unpaid wages as may be appropriate;

3 6. For pre-judgment interest on any unpaid compensation commencing from the
4 date such amounts were due;

5 7. For liquidated damages;

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

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

11 As to the Second Cause of Action

12 10. That the Court declare, adjudge and decree that Defendant violated California
13 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

14 11. For unpaid meal period premium wages as may be appropriate;

15 12. For pre-judgment interest on any unpaid compensation commencing from the
16 date such amounts were due;

17 13. For reasonable attorneys' fees under California Code of Civil Procedure §
18 1021.5, and for costs of suit incurred herein; and

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

21 As to the Third Cause of Action

22 15. That the Court declare, adjudge and decree that Defendant violated California
23 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

24 16. For unpaid rest period premium wages as may be appropriate;

25 17. For pre-judgment interest on any unpaid compensation commencing from the
26 date such amounts were due;
27
28

1 18. For reasonable attorneys' fees under California Code of Civil Procedure §
2 1021.5, and for costs of suit incurred herein; and

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

5 As to the Fourth Cause of Action

6 20. That the Court declare, adjudge and decree that Defendant violated the record
7 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders,
8 and willfully failed to provide accurate itemized wage statements thereto;

9 21. For penalties and actual damages pursuant to California Labor Code § 226(e);

10 22. For injunctive relief to ensure compliance with this Section, pursuant to
11 California Labor Code § 226(h);

12 23. For reasonable attorneys' fees and for costs of suit incurred herein; and

13 24. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 As to the Fifth Cause of Action

16 25. That the Court declare, adjudge and decree that Defendant violated California
17 Labor Code §§ 201, 202, 203 by willfully failing to pay all compensation owed at the time
18 of termination of the employment;

19 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
20 employees who have left Defendant's employ;

21 27. For pre-judgment interest on any unpaid wages from the date such amounts were
22 due;

23 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

24 29. For such other and further relief as the Court may deem equitable and
25 appropriate.
26

27 As to the Sixth Cause of Action
28

1 30. That the Court declare, adjudge and decree that Defendant violated Labor Code §
2 2802 and the IWC Wage Orders;

3 31. For general unpaid wages and reimbursement of business expenses as may be
4 appropriate;

5 32. For pre-judgment interest on any unpaid compensation commencing from the
6 date such amounts were due;

7 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

11 As to the Seventh Cause of Action

12 35. That the Court declare, adjudge and decree that Defendant violated California
13 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours, failing
14 to provide meal periods, failing to maintain accurate records of meal periods, failing to
15 authorize and permit rest periods, and failing to maintain accurate records of all hours
16 worked and meal periods, failing to furnish accurate wage statements, and failing to
17 indemnify necessary business expenses;

18 36. For restitution of unpaid wages to Plaintiff and all Class Members and
19 prejudgment interest from the day such amounts were due and payable;

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

24 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure § 1021.5;

26 39. For injunctive relief to ensure compliance with this Section, pursuant to
27 California Business & Professions Code §§ 17200, *et seq.*; and,
28

1 40. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Eighth Cause of Action

4 41. That the Court declare, adjudge and decree that Defendants violated the
5 California Labor Code Sections 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198,
6 2100-2104, 2802, 6310, 6400-6404, 6401.7, 6409.6 as well as applicable Wage Order;

7 42. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
8 other applicable Labor Code provisions;

9 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Labor Code § 2699;

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

13 As to all Causes of Action

14 45. For any additional relief that the Court deems just and proper.

15
16
17 Dated: May 29, 2023

TUNYAN LAW, APC

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20 _____

21 Lilit Tunyan
22 Artur Tunyan

23 Attorneys for Plaintiff Scott Allen Athey
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Dated: May 29, 2023

Thurs

Attorneys for Plaintiff Scott Allen Athey

Exhibit “A”



TUNYAN LAW

Lilit Tunyan, Esq.

1336 Rossmoyne Avenue,
Glendale, CA 91207

Tel: (323) 410-5050

ltunyan@tunyanlaw.com

March 24, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA ONLINE SUBMISSION

Department of Industrial Relations
Division of Occupational Safety and Health
464 West 4th Street, Suite 332
San Bernardino, CA 92401
DOSHSB@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Walker Evans Enterprises
Agent for Service of Process
Phyllis E. Evans
2304 Fleetwood Drive
Riverside, CA 92509

VIA CERTIFIED MAIL

Return Receipt Requested

Attorneys for Walker Evans Enterprises
VARNER & BRANDT LLP
Richard Marca
3750 University Avenue, Floor 6
Riverside, CA 92501

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698, 2699 ET SEQ.**

Re: ***Scott Allen Athey v. Walker Evans Enterprises***

To Whom It May Concern:

Please be advised that my office has been retained by Scott Allen Athey ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§

2699, *et seq.*) against his former employer Walker Evans Enterprises (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Riverside County. As such, Defendant are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a quality controller from approximately April 12, 2021 to February 12, 2022, primarily in Riverside County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and over 8 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff’s experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including straight time wages and overtime wages). Throughout the statutory period, Plaintiff and the Aggrieved Employees received additional remuneration in the form of bonuses. However, Defendant has not compensated Plaintiff and the Aggrieved Employees at the proper overtime and sick pay rate. Defendant did not include the bonuses paid to Plaintiff and the Aggrieved Employees in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Defendant required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shift or continue working after the scheduled shift. Plaintiff was required to arrive at least 10-15 minutes earlier than his scheduled shift to perform preparatory work prior to clocking in to work such as turning on the computer, setting things to prepare for work. Additionally, Plaintiff and the Aggrieved Employees were also required to arrive earlier than their scheduled time to stay in line with other employees to use the timeclock machine to clock in to work on time. Defendant failed to compensate Plaintiff and the Aggrieved Employees for that time. Plaintiff and the Aggrieved Employees were also required to clock out at the end of their shifts and continue working to clean up the workplace since Plaintiff and the Aggrieved Employees were not always authorized for overtime work and had to do the cleanup work off-the-clock. Defendant also required Plaintiff and the Aggrieved Employees to clock out but continue working through meal periods. Plaintiff and the Aggrieved Employees were required to communicate with their supervisors using their personal cellular telephones for work purposes at home after their scheduled work time. Lastly, Defendant would modify Plaintiff’s and the Aggrieved Employees’ time records to reflect that they worked 5 hour shifts instead of 6 hours by implementing unlawful time shaving as well as to reflect on the records that meal periods were taken when they were not actually taken. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees

are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not allow Plaintiff and the Aggrieved Employees to leave the warehouse premises, and thus prevented duty-free meal periods for the Aggrieved Employees. Plaintiff's meal periods were always interrupted by Defendant's owner and co-workers, taken late or missed. Often times Defendant required Plaintiff and the Aggrieved Employees to clock out for meal periods but continue working so that it appears on the records as they took their meal periods. In those occasions when Plaintiff or the Aggrieved Employees did not clock out for meal periods as they did not actually take those meal periods, Defendant would manually alter the records of the Aggrieved Employees to reflect the meal periods which were not actually taken. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Plaintiff and the Aggrieved Employees would often times miss their first and second rest periods. Most importantly, Plaintiff and the Aggrieved Employees were not authorized and allowed to leave the warehouse premises to take their rest periods outside. Hence, Plaintiff and the Aggrieved Employees were prevented from taking duty-free rest periods. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to

dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to use their personal cell phones for work to receive and make work related calls and receive work related text messages from supervisors, managers and co-workers. Further, Plaintiff and the Aggrieved Employees were required to use their personal vehicles for work to drive to Defendant's second location to pick up supplies. Plaintiff and the Aggrieved Employees were also required to purchase tools and safety equipment necessary to perform their work. Defendant failed to reimburse Plaintiff and the Aggrieved Employees for usage of personal cell phones, mileage for using their personal vehicles as well as tools. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

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

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant' employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Take All Feasible Means to Reduce Excessive Heat in Workplace

In accordance with the Section 15 (a) of the applicable wage order issued by the Industrial Welfare Commission ("IWC"), The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. Further Section 15 (b) of IWC states that if excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

However, Defendant has not taken feasible means to reduce such excessive heat. Defendant did not have proper air conditioning and air ventilation, and temperature during summer times in the warehouse became as hot as 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat.

Labor Code § 1199 (c) provides that employers, persons, officers, agents, or other employees are guilty of a misdemeanor and subject to a fine of at least \$100 for violating, refusing or neglecting to comply with any provision of the particular Labor Code chapter or any order or ruling of the Commission.

Section 20 of IWC provides that in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of initial violation - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages, and subsequent violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

Failure to Provide Safe and Healthful Work Environment

Labor Code § 6400 provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

Labor Code § 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6402 provides that no employer shall require or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Labor Code § 6403 provides no employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful.

Defendant failed to furnish employees with safety devices and implement necessary processes and practices necessary to prevent exposure to COVID-2019. Defendant failed to necessitate the use of and provide the appropriate personal protective equipment.

Defendant failed to establish infection prevention measures such as encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces. Defendant failed to take safety measures for COVID pre-screening prior to entering the premises.

Defendant failed to take individual measures and screening to provide illness prevention training.

Defendant failed to provide all the protective equipment necessary for the work performed in the warehouse.

Defendant failed to provide training to employees on how to use personal protective equipment and safety resources. Defendant failed to provide training materials and conduct training for employees regarding health and safety measures and usage and maintenance of equipment. As a result, employees were exposed to the risk of injuries. There was an incident when Defendant's employee injured her finger as she was not trained how to use the press equipment.

Defendant failed to establish proper safety procedures and take proper health and safety measures. Defendant used to keep racks in the warehouse which were not bolted down exposing employees to the risk of injuries. Defendant also exposed employees to work in the areas that contained acetone. Defendant mandated employees to wash the shocks in acetone and alcohol and blow dry them in the warehouse with no ventilation and air conditioning. As a result, employees had chemical burns caused by the acetone.

Defendant also failed to establish and properly supervise employees on enforcement of safety and injuries reporting procedures.

Failure to Implement and Maintain an Effective Written Injury Prevention Program

Labor Code § 6401.7 provides that every employer shall establish, implement, and maintain an effective injury prevention program.

Defendant failed to establish and maintain a program that will prevent Plaintiff and Aggrieved Employees from injuries that might be caused by exposure to COVID-2019 as well as other health and safety hazards in the workplace. Specifically, Defendant failed to establish adequate injury prevention program as well infection prevention measures such as properly training employees how to use safety equipment, reporting on hazards, encouraging sick employees to stay home, implementing social distancing protocols, or establishing procedures to routinely disinfect and clean commonly used surfaces.

Failure to Provide Notice of a Potential COVID-19 Workplace Exposure

Labor Code § 6409.6 provides that if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

- (1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.
- (2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).
- (3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- (4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

Despite the fact that, based on information and belief, Defendant was notified of employees who were infected with COVID-2019 and other employees were exposed to COVID-2019, Defendant failed to provide any notice to Plaintiff and Aggrieved Employees about exposure to COVID-2019 and failed to take necessary measures to prevent exposure of Aggrieved Employees to COVID-2019. In opposite, Plaintiff, who contracted COVID, was required to arrive to work and was disciplined for staying home for three days when he tested positive for COVID.

Failure to Provide Access to Shade and Failure to Implement Heat Illness Prevention Plan

California Code of Regulations title 8, Section 3395(d) provides that shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When 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.

California Code of Regulations. title 8, Section 3395(d) also provides that 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.

California Code of Regulations title 8, Section 3395(i) provides that the employer shall establish, implement, and maintain, an effective heat illness prevention plan.

However, Defendant failed to maintain proper ventilation and air conditioning at the warehouse and has not taken feasible means to sufficiently reduce such excessive heat. The temperature in the warehouse was often times more than 100 degrees Fahrenheit. As a result, Plaintiff and Aggrieved Employees suffered injuries at their workplace due to the excessive heat, and Defendant failed to provide shade and to establish and maintain a heat illness prevention plan.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats.

Retaliation for Complaining About Occupational Safety Hazards

Labor Code § 6310 provides that no person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to their rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of themselves, or others of any rights afforded to them.
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges they have been retaliated against because they have filed or made known their intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

However, Defendant, on information and belief, retaliated against Aggrieved Employees for complaining and/or reporting about the occupational safety hazards and/or injuries by terminating their employment or taking other adverse actions against them.

Labor Code § 6427 provides that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars (\$12,471) for each violation.

Labor Code § 6428 that any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

Labor Code § 6429 that any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars (\$8,908) for each willful violation.

Failure to Provide Warehouse Quotas

Labor Code § 2100 provides that each employee of a warehouse that employs 100 employees, or a group of related warehouses that employ at least 1,000 employees may request and receive a written description of applicable quotas and work speed data. In fact, employers must give written quota descriptions to all new hires and current employees upon request. Further, pursuant to Labor Code § 2101 an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time to and from bathrooms), or compliance with occupational health and safety standards.

Defendant failed to provide a written description of applicable quotas and work speed data to employees.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.
9. IWC applicable order for failure to take all feasible means to reduce excessive heat in the workplace and provide suitable seats;
10. Labor Code § 640, 6401, 6402, 6403, 6404 for failure to provide safe and healthful work environment;
11. Labor Code § 6401.7 for failure to implement and maintain an effective written injury prevention program;
12. Labor Code § 6409.6 for failure to provide notice of a potential COVID-19 workplace exposure;
13. California Code of Regulations title 8, Section 3395(d) and (i) for failure to provide access to shade and failure to implement heat illness prevention plan;
14. Labor Code § 6310 for retaliation for complaining about occupational safety hazards.
15. Labor Code § 2100 for failure to provide warehouse quotas.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 1401, 2109, 2802, and 2699(f)(2), 6423, 6427, 6428, 6429.

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by the Aggrieved Employees or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new

claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

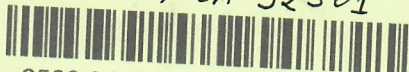
A handwritten signature in blue ink, appearing to read "L. Tunyan", with a stylized flourish at the end.

Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

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.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
**ATTORNEYS FOR WALKER EVANS
 ENTERPRISES, WARNER & BRANDT
 LLP
 RICHARD MARCA
 3750 UNIVERSITY AVE, FLOOR 6
 RIVERSIDE, CA 92501**



9590 9402 8037 2349 8176 06

2. Article Number (Transfer from service label)

7022 1670 0001 3766 2974

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Cade Kirkend

C. Date of Delivery

3-28-23

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

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #



9590 9402 8037 2349 8176 06

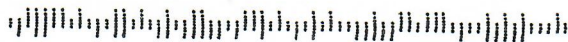
**United States
 Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box•



**TUNYAN LAW, APC
 1336 Rossmoyne Ave.
 Glendale, CA 91207**

First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10





VERDUGO VIEJO
101 N VERDUGO RD
GLENDALE, CA 91206-9998
(800)275-8777

03/24/2023 04:53 PM

Product	Qty	Unit Price	Price
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First-Class Mail®	1		\$1.74
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Large Envelope			
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Glendale, CA 91203			
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Weight: 0 lb 2.60 oz			
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Estimated Delivery Date			
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Mon 03/27/2023			
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Certified Mail®			\$4.15
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Tracking #:			
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70221670000137663001			
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Return Receipt			\$3.35
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Tracking #:			
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9590 9402 8037 2349 8175 83			
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Total			\$9.24
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First-Class Mail®	1		\$1.74
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Large Envelope			
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Visalia, CA 93277			
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Weight: 0 lb 2.50 oz			
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Estimated Delivery Date			
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Mon 03/27/2023			
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Certified Mail®			\$4.15
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Tracking #:			
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70221670000137662998			
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Return Receipt			\$3.35
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Tracking #:			
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9590 9402 8037 2349 8175 90			
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Total			\$9.24
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First-Class Mail®	1		\$1.98
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Large Envelope			
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Jurupa Valley, CA 92509			
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Weight: 0 lb 3.30 oz			
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Estimated Delivery Date			
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Mon 03/27/2023			
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Certified Mail®			\$4.15
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Tracking #:			
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70221670000137662981			
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Return Receipt			\$3.35
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Tracking #:			
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9590 9402 8037 2349 8176 13			
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Total			\$9.48
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First-Class Mail®	1		\$1.98
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Large Envelope			
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Riverside, CA 92501			
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Weight: 0 lb 3.20 oz			
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Estimated Delivery Date			
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Mon 03/27/2023			
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Certified Mail®			\$4.15
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Tracking #:			
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70221670000137662974			
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Return Receipt			\$3.35
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7022 1670 0001 3766 2981

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

For delivery information, visit our website at www.usps.com®.

Jurupa Valley, CA 92509

Certified Mail Fee \$4.15

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$1.98

Total Postage and Fees \$9.48

Sent To WALKER EVANS ENTERPRISES
AGENT FOR SERVICE OF PROCESS PHYLIS EVANS
2304 FLEETWOOD DRIVE
RIVERSIDE, CA 92509

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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

For delivery information, visit our website at www.usps.com®.

Riverside, CA 92501

Certified Mail Fee \$4.15

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$1.98

Total Postage and Fees \$9.48

Sent To WALKER EVANS ENTERPRISES, WARNER & BRAND LLP
RICHARD MARCA, 3750 UNIVERSITY AVE, FLOOR 6
RIVERSIDE, CA 92501

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Friday, March 24, 2023 4:47:11 PM

3/24/2023

LWDA Case No. LWDA-CM-944344-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Scott Allen Athey
Employer: Walker Evans Enterprises To Whom
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: [Lilit Tunyan, Esq.](#)
To: DOSH@dir.ca.gov
Subject: Athey v. Walker Evans Enterprises/Notice pursuant to Labor Code §2699.3 on health and safety violations
Date: Friday, March 24, 2023 5:09:14 PM
Attachments: [image001.png](#)
[image002.png](#)
[PAGA and OSHA violations notice Athey v. Walker Evans Enterprises.pdf](#)

Hello,

Please see attached the written notice on health and safety violations pursuant to Labor Code §2699.3 prior to commencing a civil action.

Best regards,

Lilit Tunyan, Esq

1336 Rossmoyne Avenue

Glendale, CA 91207

Tel: (323) 410-5050

ltunyan@tunyanlaw.com

www.tunyanlaw.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

Exhibit “B”

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Occupational Safety and Health
San Bernardino District Office
464 West 4th Street, Suite 332
San Bernardino, CA 92401
Tel. # (909) 383-4321 Fax # (909) 383-6789



April 26, 2023

Lilit Tunyan
1336 Rossmoyne Ave.
Glendale, CA 91207

Dear Lilit Tunyan:

In response to your complaint regarding Walker Evans Enterprises 2304 Fleetwood Drive in Riverside (Complaint No. 2024623), the Division of Occupational Safety and Health has sent the attached letter to the employer. Your identity has not been revealed to the employer.

Any items(s) not addressed in the copy of the enclosed employer letter are not within the jurisdiction of the Division of Occupational Safety and Health.

When the Division receives the employer's response, a copy of the response will be sent to you.

California law protects any person who makes a complaint about a workplace safety or health hazard from being treated differently, discharged or discriminated against in any manner by their employer. If you believe that you have been discriminated against because you made a complaint to the Division of Occupational Safety and Health, you may file a discrimination complaint with the nearest office of the Division of Labor Standards Enforcement (Labor Commissioner). However, you must file your complaint within six (6) months of the discriminatory action.

If you have any questions concerning this matter, please contact me at the address above.

Thank you for your concern about workplace safety and health.

Sincerely,


Michael Loupe
District Manager

/rg

enclosure: Complaint Notification to Employer, letter "d"
reference: Complaint No. 2024623 - Ltr E

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Occupational Safety and Health
San Bernardino District Office
464 West 4th Street, Suite 332
San Bernardino, CA 92401
Tel. # (909) 383-4321 Fax # (909) 383-6789



April 26, 2023

Walker Evans Enterprises
PO BOX 2469
Riverside, CA 92516

Dear Employer:

The Division of Occupational Safety and Health has received a complaint (Complaint No. 2024623) alleging the following condition(s) at your workplace at 2304 Fleetwood Drive, Riverside, which may be a violation of the Safety Orders found in Title 8 of the California Code of Regulations:

Code Section(s) and Alleged Condition(s):

1. T8CCR 3203(a)(7) Employer failed to take individual measures and screening to provide illness prevention training & failed to provide training materials and conduct training for employees regarding health and safety measures and usage and maintenance of equipment.
2. T8CCR 3380(f) Employer failed to provide all the protective equipment necessary for the work performed in the warehouse and failed to provide training to employees on how to use personal protective equipment and safety resources.
3. T8CCR 5155(e) Employer exposed employees to work in the areas that contained acetone. Employer mandated employees to wash the shocks in acetone and alcohol and blow dry them in the warehouse with no ventilation and air conditioning. As a result, employees had chemical burns caused by the acetone.

To review Title 8, California Code of Regulations, go to www.dir.ca.gov, click on "Title 8 Regulations" then click on "Cal/OSHA" and enter the code section number mentioned above. Or you can go directly to www.dir.ca.gov/samples/search/query.htm.

The Division has not determined whether the hazard(s), as alleged, exist(s) at your workplace and, at this time, the Division does not intend to conduct an inspection of your workplace.

However, you are required to investigate the alleged condition(s) and notify this office in writing no later than fourteen (14) calendar days after receipt of this letter whether the alleged condition(s) exist and, if so, specify the corrective action(s) you have taken and the estimated date when the corrections will be completed. If possible, please fax or e-mail your response to Michael Loupe, district manager, at fax number (909) 383-6789 or e-mail at DIRDOSHSB@DIR.ca.gov.

Please include any written documentation, e.g., equipment purchase orders or contracts for corrective work, and photographs, if appropriate, in your response. If you do not respond in a timely and satisfactory manner, an unannounced inspection of your workplace will be scheduled, which may result in citation(s) and monetary penalties. Also, every tenth satisfactory letter response from employers is subject to verification by an inspection.

You are required to post a copy of this letter in a prominent location in the workplace where it is readily accessible for

employee review for at least three (3) working days or until the hazard is corrected, whichever is longer.

This letter is not a citation or a notification of a proposed penalty. Citations and penalties can only be issued after an inspection of your workplace. If the Division does not receive a satisfactory response from you within fourteen (14) calendar days after receipt of this letter, an on-site inspection will be conducted as appropriate.

If the identity of the complainant is known to the Division, a copy of this letter will be sent to the complainant. Also, the complainant will be notified that California law protects any person who makes a complaint about workplace safety or health hazards from being treated differently, discharged or discriminated against in any manner by their employer. If a complainant believes they have been discriminated against, it is their right to file a complaint with the Division of Labor Standards Enforcement within six (6) months of the discriminatory action.

If you have any questions concerning this matter, please contact me at the address in the letterhead.

Your interest in the safety and health of your employees is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Loupe", is written over a horizontal line.

Michael Loupe
District Manager

/rg

reference: Complaint No. 2024623 - Ltr D

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)

) ss

3 COUNTY OF LOS ANGELES)

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18
and not a party to the within action; my business address is 1336 Rossmoyne Avenue
5 Glendale, California 91207. On May 29, 2023, I served the foregoing document described as:

6 On the date indicated below, I served the document described as: **FIRST AMENDED**
7 **COMPLAINT** on the interested parties in this action by sending a true copy thereof to
interested parties as follows and as stated on the attached service list:

8
9 Richard D. Marca
Richard.Marca@varnerbrandt.com
Raul B. Garcia
10 raul.garcia@varnerbrandt.com
Madison R. Montgomery
11 Madison.Montgomery@varnerbrandt.com
Fabiola Rodriguez
12 Fabiola.Rodriguez@varnerbrandt.com
Daisy Diaz
13 Daisy.Diaz@varnerbrandt.com
Christine A. Mitchell
14 Christine.Mitchell@varnerbrandt.com
Alisha Maline
15 alisha.maline@varnerbrandt.com
16 **VARNER & BRANDT LLP**
3750 University Avenue, Floor 6
17 Riverside, CA 92501
Telephone: (951) 274 -7777
18 Facsimile: (951) 274- 7770

19 **Attorneys for Defendant WALKER EVANS ENTERPRISES**

20 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses
21 listed above via electronic mail. I did not receive an error message.

22 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California,
23 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.

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

26 Executed on May 29, 2023 at Glendale, California.

27 Lilit Tunyan

28 Name



Signature