

October 6, 2025

VIA ON-LINE SUBMISSION ONLY TO:
(copy by certified mail to all Defendants)

Private Attorneys General Act
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Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
HilesTuthill v. Crown Lift Trucks
LWDA No.

Gentlepersons:

This office represents Plaintiff Michael HilesTuthill (“Plaintiff”) and other similarly situated aggrieved non-exempt, hourly employees aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2802, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Crown Equipment Corporation;



Crown Lift Trucks; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in San Bernardino Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff’s class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Defendants’ location in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse for necessary business expenses all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants required Aggrieved Employees to clock out at the end of their scheduled shift and keep working, along with traveling between worksites while off the clock. Further Defendants required Plaintiff and Aggrieved Employees to carry work cell phones and tablets phones during work and respond to work-related requests during meal breaks.

By implementing policies, programs, practices, procedures and protocols which resulted in off the



clock work, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Specifically, Defendants required Plaintiff and Aggrieved Employees to carry work cell phones and tablets phones during work and respond to work-related requests during meal breaks. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay for each meal period that Defendants failed to provide or deficiently provided. Further, what meal periods Plaintiff and Aggrieved Employees were taken were on-duty due to Defendants' policy and practice requiring Aggrieved Employees to remain on-call and keep work phones on during meal periods, all in violation of Labor Code and applicable Wage Orders.



Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Additionally, Defendants also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Additionally, Defendants failed to provide all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Plaintiff and Aggrieved Employees. Additionally, the wage statements given to Plaintiffs and Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiff and Aggrieved Employees were confusing and required Plaintiff and Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Plaintiff and Aggrieved Employees. Furthermore, the wage statements given to Plaintiff and Aggrieved Employees failed to accurately specify the name and address of the employer as required under the law as the wage statements



provided to Plaintiff and Aggrieved Employees name an entity that is not registered with the California Secretary of State's Office despite the fact all businesses that wish to conduct business in California need to register with the California Secretary of State's Office. Moreover, the wage statements given to Plaintiff and Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages at the time of termination, because Defendants failed to pay for all hours worked, required off the clock work. Additionally, Defendants failed to pay premium wages owed for unprovided meal and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to pay Plaintiff and the other Aggrieved Employees all vested vacation time at the time of their separation from Defendants' employment, in violation of Labor Code § 227.3. Defendants failed to pay Plaintiff for all earned and unused vacation time at his final rate of pay at the time of Plaintiff's separation from his employment. On information and belief similarly situated Aggrieved Employees are also owed vested vacation time.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants including for power and hand tools. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC



Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

During the course of Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants required Aggrieved Employees to clock out at the end of their scheduled shift and keep working, along with traveling between worksites while off the clock. Further Defendants required Plaintiff and Aggrieved Employees to carry work cell phones and tablets phones during work and respond to work-related requests during meal breaks. Aggrieved Employees were also required to work during meal breaks.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California



Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates, or of miscalculating them by not including all forms of remuneration in the regular rate of compensation. Defendants, and each of them, have intentionally and improperly changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.



In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under



Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Comply with Labor Code §§ 245 *et seq.* and 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1). Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §



245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Plaintiff and Aggrieved Employees. Additionally, the wage statements given to Plaintiffs and Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiff and Aggrieved Employees were confusing and required Plaintiff and Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Plaintiff and Aggrieved Employees. Furthermore, the wage statements given to Plaintiff and Aggrieved Employees failed to accurately specify the name and address of the employer as required under the law as the wage statements provided to Plaintiff and Aggrieved Employees name an entity that is not registered with the California Secretary of State's Office despite the fact all businesses that wish to conduct business in California need to register with the California Secretary of State's Office. Moreover, the wage statements given to Plaintiff and Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are 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) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to



pay Aggrieved Employees minimum wages and overtime, and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages and tips earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. Specifically, Defendants required Plaintiff and the Aggrieved Employees to use power and hand tools. However, Defendants failed to reimburse Plaintiff, and upon information and belief the other Aggrieved Employees.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting



from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Maintain Temperatures Under the Wage Orders

Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding the temperatures maintained at employers facilities within California: “(A) 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. (B) 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... (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.” (*See, e.g.,* Cal. Code Regs., tit. 8 § 11070(15), Cal. Code Regs., tit. 8, § 11090(15)).

Further California Labor Code § 6720 required the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by January 1 2019. Cal/OSH’s draft standard applies its proposed regulations to all indoor work areas where the temperature equals or exceeds 82° Fahrenheit when employees are present. At times during the relevant time period Plaintiff and other warehouse workers were subjected to excessive heat and or humidity resulting in temperatures equaling or exceeding 82° F. During the relevant time period, as detailed above, Defendants violated Labor Code §§ 1198 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, *inter alia*, providing adequate air conditioning or heat ventilation etc. Plaintiff is informed and believes that Defendants also failed to maintain the temperature in toilet rooms resting rooms and change rooms during hours of use to no less than 68° F.

These practices and policies resulted in Defendants’ failure to maintain temperature providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders. Plaintiff and the Aggrieved Employees may therefore pursue damages and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in an amount to be determined at trial. More specifically, for the above addressed violations of paragraph 15 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, Plaintiff seeks penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).



Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1199, 2698, and 2699, *et seq.* 2802; including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);



(d) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(f) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

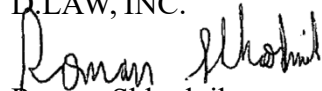


This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Crown Equipment Corporation; Crown Lift Trucks; and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.



Roman Shkodnik

Cc: Crown Equipment Corporation; Crown Lift Trucks by Certified Mail

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6 Attorneys for Plaintiff MICHAEL HILESTUTHILL,
on behalf of himself and others similarly situated
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10
11 MICHAEL HILESTUTHILL, on behalf of
himself and others similarly situated,

12 Plaintiff,

13 vs.

14 CROWN LIFT TRUCKS, an Ohio
15 corporation; CROWN EQUIPMENT
CORPORATION, an unknown entity; and
16 DOES 1 through 50, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et seq.* and 246
7. Violation of Labor Code § 226(a);
8. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff MICHAEL HILESTUTHILL, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all similarly situated current and
6 former employees within the State of California who, at any time four (4) years prior to the filing of
7 this lawsuit, are or were employed as non-exempt hourly employees by CROWN LIFT TRUCKS,
8 an Ohio corporation; CROWN EQUIPMENT CORPORATION, an unknown entity; and DOES 1
9 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
10 that Defendants, and each of them, violated various provisions of the California Labor Code,
11 relevant orders of the Industrial Welfare Commission (IWC), and California Business & Professions
12 Code, and seeks redress.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in San Bernardino County and/or throughout California, and consistently
17 worked at Defendants’ behest without being paid all wages due. More specifically, Plaintiff and the
18 other similarly situated Class members were employed by Defendants and worked at Defendants’
19 offices and other facilities where the conduct giving rise to the allegations in this Class Action
20 Complaint occurred. Upon information and belief, Plaintiff was employed by Defendants and (1)
21 shared similar job duties and responsibilities, (2) was subjected to the same policies and practices,
22 and (3) endured similar violations at the hands of Defendants as the other Employee Class members
23 who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work while
25 remaining under Defendants’ control before and after being on the clock for their daily work shift.
26 Defendants failed to provide Plaintiff and the Class with lawful meal and rest periods, as employees
27 were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest
28 periods as required by the Labor Code.

THE PARTIES

A. The Plaintiff

4. Plaintiff MICHAEL HILESTUTHILL has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California.

B. The Defendants

5. Defendant CROWN LIFT TRUCKS, ("CLT") is an Ohio corporation with its principle executive offices in Ohio, and has been listed as the employer on the handbook issued to Plaintiff during the relevant time period. CLT lists an Ohio address with the California Secretary of State and employs Plaintiff and the Class members in California, including at Defendants' offices and facilities in San Bernardino, California, and throughout California and conducts business throughout California.

6. Defendant CROWN EQUIPMENT CORPORATION, ("CEC") is an entity of unknown form, and has been listed as the employer on the handbook issued to Plaintiff during the relevant time period. CEC employs Plaintiff and the Class members in California, including at Defendants' offices and facilities in San Bernardino, California, and throughout California and conducts business throughout California.

7. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each

1 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
2 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
3 control over the wages, hours or working conditions of Employees, or suffered or permitted
4 Employees to work, or engaged, thereby creating a common law employment relationship, with
5 Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

6 **JURISDICTION AND VENUE**

7 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
9 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
10 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
11 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
12 liabilities giving rise to this lawsuit occurred at least in part in San Bernardino County and
13 Defendants maintain and operate company offices and facilities in San Bernardino County, and
14 employ Plaintiff and other Class members in San Bernardino County and throughout California.

15 **FACTUAL BACKGROUND**

16 10. The Employees who comprise the Class and Collective, including Plaintiff, are
17 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
18 Employees who work in nonexempt positions at the direction of Defendants in the State of
19 California. Plaintiff and the Class members were either not paid by Defendants for all hours worked
20 or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and
21 Employees were required to clock out at the scheduled shift end-time and then continue to work.
22 Moreover, Employees were required to carry their personal phones during work and respond to
23 work-related requests during meal breaks. Plaintiff also contends that Defendants failed to pay
24 Plaintiff and the Class members all wages due and owing, failed to provide meal and rest breaks,
25 and failed to furnish accurate wage statements, all in violation of various provisions of the California
26 Labor Code and applicable Wage Orders. Additionally, Defendants paid Plaintiffs and Employees
27 shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses.
28 However, upon information and belief, Defendants failed to incorporate all remunerations, including

1 shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
2 into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
3 Therefore, during times when Plaintiffs and Employees worked overtime and received shift
4 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
5 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

6 11. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class
7 members all wages due and owing, by failing to provide meal and rest breaks, and failed to furnish
8 accurate wage statements, all in violation of various provisions of the California Labor Code and
9 applicable Wage Order provisions.

10 12. During the course of Plaintiff and the Class members' employment with
11 Defendants, they were not paid all wages they were owed, including for all work performed and
12 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
13 keep labor budgets low.

14 13. As a matter of uniform Company policy, Plaintiff and the Class members were
15 required to work during their meal and rest breaks which were not compensated by Defendants in
16 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
17 wages and overtime for the time they were required to comply with other requirements imposed
18 upon them, which they had to complete while working through their meal and rest breaks and
19 without compensation. As a result Plaintiff and the Class members worked shifts over eight (8)
20 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
21 overtime rate for all such hours, including by being required to perform work duties and tasks
22 without pay and while off-the-clock. As a result, Plaintiff and the Class members worked
23 substantial overtime hours during their employment with Defendants for which they were not
24 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

25 14. As a result of the above described daily work demands and pressures to work through
26 breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
27 members were not properly paid for all wages earned and for all wages owed to them by Defendants,
28 including when working more than eight (8) hours in any given day and/or more than forty (40)

1 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and
2 Class members incurred overtime hours worked for which they were not adequately and completely
3 compensated, in addition to the hours they were required to work off the clock. To the extent
4 applicable, Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5
5 times the regular rate for the first eight hours of the seventh consecutive work day in a week and
6 overtime payments at the rate of 2 times the regular rate for hours worked over eight (8) on the
7 seventh consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

8 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
9 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
10 hours worked, and failing to pay minimum wage for all time worked as required by California Law.

11 16. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
12 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
13 hours worked, and failing to pay minimum wage for all time worked as required by California Law.

14 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees
16 overtime compensation at premium overtime rates for all hours worked in excess of eight (8) hours
17 a day and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve
18 (12) hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage
19 Orders.

20 18. Additionally, from at least four (4) years prior to the filing of this lawsuit and
21 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
22 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
23 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
24 not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of
25 wages at each Employee's effective regular rate of pay, for each meal period that Defendants failed
26 to provide or deficiently provided.

27 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary commissions,

1 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
2 failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions,
3 incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
4 purposes of calculating sick pay. Therefore, during times when Plaintiff and Employees worked
5 overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or
6 nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a lower overtime rate than
7 required.

8 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
9 present, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary commissions,
10 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
11 failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions,
12 incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
13 purposes of calculating vacation pay. Therefore, during times when Plaintiff and Employees worked
14 overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or
15 nondiscretionary bonuses, Defendants failed to pay all vacation pay by paying a lower overtime rate
16 than required.

17 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
18 present, Defendants have consistently failed to provide Employees with paid duty-free rest breaks
19 of not less than ten (10) minutes for every work period of four (4) or more consecutive hours; nor
20 did Defendant pay Employees premium pay for each day on which requisite rest breaks were not
21 provided or were deficiently provided at one hour of wages at each Employee's effective regular
22 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

23 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
24 continuing to the present, Defendants have consistently failed to provide Employees with timely,
25 accurate, and itemized wage statements as required by California wage-and-hour laws. Specifically,
26 Defendants failed in their affirmative obligation to keep accurate records of the correct overtime
27 wages based on proper regular rate calculations that included shift differentials, nondiscretionary
28 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of

1 compensation of their Employees. Moreover, the wage statements given to Employees by
2 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
3 periods and rest breaks, all of which Defendants knew or reasonably should have known were owed
4 to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing
5 and required Employees to engage in discovery and refer to outside sources to verify whether their
6 pay was correct and potentially resulting in a miscalculation by the Employees.

7 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
8 continuing to the present, Defendants have consistently failed to provide Employees with timely,
9 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

10 24. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to keep accurate time and wage
12 records as required by California wage-and-hour laws.

13 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
15 performance of their job duties for Defendants including, but not limited to power tools and hand
16 tools, which were necessary to perform their duties under Defendants' employ which was used
17 throughout the course of Employees' duties under Defendants' employ in violation of Labor Code
18 § 2802.

19 26. From at least four (4) years prior to filing this lawsuit and continuing to the present,
20 Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at
21 the time of their termination of within seventy-two (72) hours of their resignation, as required by
22 California wage-and-hour laws.

23 27. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
24 Code §§ 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.4, 226.7, 227.3, 245 *et seq.*, 246, 510, 512,
25 558, 558.1, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, and 2802, and applicable
26 provisions of the IWC Wage Orders.

27 28. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
28 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have

1 enjoyed from their violations of Labor Code.

2 **CLASS ALLEGATIONS**

3 29. Plaintiff brings this class action on behalf of himself and all others similarly situated
4 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
5 “All individuals employed by Defendants, at any time within four (4) years of the filing of this
6 lawsuit, as non-exempt, hourly employees within the State of California.

7 30. Further, plaintiff seeks to represent the following Subclasses composed of and
8 defined as follows:

9 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
10 compensated for all hours worked for Defendants at the applicable minimum wage.

11 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
12 compensated for all hours worked for Defendants at the required rates of pay, including for all hours
13 worked in excess of eight in a day and/or forty in a week.

14 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
15 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
16 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

17 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
18 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
19 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
20 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

21 e. Subclass 5. Vacation Wages Subclass. All Class members who were not
22 compensated at the Employee’s regular rate of pay for their vacation wages.

23 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at
24 the Employee’s regular rate of pay for their sick pay wages.

25 g. Subclass 7. Wage Statement Subclass. All Class members who, within the
26 applicable limitations period, were not provided with accurate itemized wage statements.

27 h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures. All Class
28 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in

1 the performance of Employees job duties for Defendants which were necessary to perform their
2 duties under Defendants' employ.

3 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
4 applicable limitations period, either voluntarily or involuntarily separated from their employment
5 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
6 termination.

7 j. Subclass 10. B UCL Subclass. All Class members who are owed restitution as a
8 result of Defendants' business acts and practices, to the extent such acts and practices are found to
9 be unlawful, deceptive, and/or unfair.

10 31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
11 the class description with greater particularity or further division into subclasses or limitation to
12 particular issues.

13 32. This action has been brought and may properly be maintained as a class action under
14 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
15 interest in litigation and proposed class is easily ascertainable.

16 **A. Numerosity**

17 33. The potential members of the class as defined are so numerous that joinder of all the
18 member of the class is impracticable. While the precise number of class member has not been
19 determined at this time, Plaintiff is informed and believes that, during the time period relevant to
20 this lawsuit, Defendants employed more than 100 individuals within the State of California.

21 34. Accounting for employee turnover during the relevant time period increases this
22 number substantially. Plaintiff alleges that Defendants' employment records will provide
23 information as to the number and location of all class members.

24 **B. Commonality**

25 35. There are questions of law and fact common to the class that predominate over any
26 questions affecting only individual class members. These common questions of law and fact include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;
28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
2 § 510;
- 3 d. Whether Defendants failed to pay Employees vacation wages as required under
4 Labor Code § 227.3;
- 5 e. Whether Defendants failed to pay Employee s sick pay as required under Labor Code
6 § 245;
- 7 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
8 Wage Orders, by failing to provide Employees with requisite meal periods or
9 premium pay in lieu thereof;
- 10 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
11 Orders, by failing to provide Employees with requisite rest breaks or premium pay
12 in lieu thereof;
- 13 h. Whether Defendants violated Labor Code § 226(a);
- 14 i. Whether Defendants failed to keep accurate time and wage records;
- 15 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
16 wages and compensation due and owing at the time of termination of employment;
- 17 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 18 l. Whether Employees are entitled to equitable relief pursuant to Business and
19 Professions Code § 17200 *et seq.*

20 **C. Typicality**

21 36. The claims of the named plaintiff are typical of those of the other Employees.
22 Employees all sustained injuries and damages arising out of and caused by Defendant's common
23 course of conducts in violation of statutes, as well as regulations that have the force and effect of
24 law, as alleged herein.

25 **D. Adequacy of Representation**

26 37. Plaintiff will fairly and adequately represent and protect the interest of Employees.
27 Counsel who represents Employees are experienced and competent in litigating employment class
28 actions.

1 **E. Superiority of Class Action**

2 38. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all Employees predominate over any questions affecting only
5 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
6 Defendants' illegal policies or practices of failing to compensate Employees properly.

7 39. Class action treatment will allow those persons similarly situated to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Against All Defendants)**

13 40. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 41. Defendants failed to pay Employees minimum wages for all hours worked.
16 Defendants had a consistent policy of misstating Employees time records and failing to pay
17 Employees for all hours worked. Specifically, Plaintiff and Employees were required to clock out
18 at the scheduled shift end time and continue working, and travel between jobsites while off the
19 clock. Moreover, Employees were required to carry work cell phones and tablets phones during
20 work and respond to work-related requests during meal breaks. Moreover, Defendants did not pay
21 Plaintiff and Employees at the applicable minimum wage for all hours worked. This caused
22 Employees to work without compensation in excess of their eight-hour shift in a given work day.
23 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
24 applicable to Employees, as a result of implementing a uniform policy and practice that denied
25 accurate compensation to Plaintiff and the other members of the Employees as to minimum wage
26 pay.

27 42. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
28 The minimum wage for employees fixed by the commission is the

1 minimum wage to be paid to employees, and the payment of a less
2 wage than the minimum so fixed is unlawful.

3 43. The applicable minimum wages fixed by the commission for work during the
4 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore
5 entitled to double the minimum wage during the relevant period.

6 44. The minimum wage provisions of California Labor Code are enforceable by private
7 civil action pursuant to California Labor Code § 1194(a) which states:

8 Notwithstanding any agreement to work for a lesser wage, any
9 employee receiving less than the legal minimum wage or the legal
10 overtime compensation applicable to the employee is entitled to
11 recover in a civil action the unpaid balance of the full amount of this
12 minimum wage or overtime compensation, including interest
13 thereon, reasonable attorney's fees and costs of suit.

14 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
15 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

16 California Labor Code § 1194.2 also provides for the following remedies:
17 In any action under Section 1194 . . . to recover wages because of
18 the payment of a wage less than the minimum wages fixed by an
19 order of the commission, an employee shall be entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully
21 unpaid and interest thereon.

22 46. Defendants have the ability to pay minimum wages for all time worked and have
23 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
24 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

25 47. Wherefore, Employees are entitled to recover the unpaid minimum wages (including
26 double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully
27 unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor
28 Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

48. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 49. By their conduct, as set forth herein, Defendants violated California Labor Code §
3 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
4 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
5 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
6 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
7 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
8 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
9 paying Employees wages for all hours worked including time off the clock when Plaintiff and
10 Employees were required to clock out at the scheduled shift end time and continue working, and
11 travel between jobsites while off the clock. Moreover, Employees were required to carry work cell
12 phones and tablets phones during work and respond to work-related requests during meal breaks.
13 Employees regularly worked over 8 hours on a given day without receiving overtime
14 compensation.

15 50. Defendants consistently improperly rounded down, changed, adjusted Employees
16 time records, paid Employees less than their time records showed.

17 51. Furthermore, on information and belief, Defendants did not pay Plaintiff and
18 Employees the correct overtime rate for the recorded overtime hours that they generated. In addition
19 to an hourly wage, Defendants paid Plaintiff and Employees shift differentials, nondiscretionary
20 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
21 belief, Defendants failed to incorporate all remunerations, including shift differentials,
22 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation
23 of the regular rate of pay for purposes of calculating the overtime wage rate.

24 52. Therefore, during times when Plaintiff and Employees worked overtime and
25 received shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary
26 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

27 53. Employees have been damaged by these violations of California Labor Code §§ 204
28 and 510 (and the relevant orders of the Industrial Welfare Commission).

1 54. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
2 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
3 full amount of all their unpaid wages and overtime compensation, with interest, plus their
4 reasonable attorneys' fees and costs.

5 55. The forgoing uncompensated work caused Plaintiff and Employees to work in excess
6 of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to
7 overtime and double-time wages which were systemically denied.

8 56. Defendants' failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.
10 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
11 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
12 compensation earned by Employees. Each such failure to make a timely payment of compensation
13 to Employees constitutes a separate violation of California Labor Code § 204.

14 57. Employees have been damaged by these violations of California Labor Code §§ 204
15 and 510 (and the relevant orders of the Industrial Welfare Commission).

16 58. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
17 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
18 full amount of all their unpaid wages and overtime compensation, with interest, plus their
19 reasonable attorneys' fees and costs.

20 **THIRD CAUSE OF ACTION**

21 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 59. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 60. Employees regularly worked shifts greater than five (5) hours and greater than ten
26 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more
27 than five (5) hours without providing him or her with a meal period of not less than thirty (30)
28 minutes or for a shift of more than ten (10) hours without providing him or her with a second meal

1 period of not less than thirty (30) minutes.

2 61. Defendants failed to provide Employees with meal periods as required under the
3 Labor Code. Employees were consistently required to work through their meal periods which they
4 were consistently denied. Employees were also required to take meal periods after working well
5 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
6 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
7 period as required by law.

8 62. Moreover, Defendants failed to compensate Employees for each meal period not
9 provided or inadequately provided, as required under Labor Code § 226.7. Additionally, as detailed
10 above, when Defendants did pay meal period premiums, they did so at the normal regular rate of
11 pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly
12 calculating the regular rate.

13 63. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
14 amount equal to one (1) hour of wages at their effective regular rates of pay for each meal period
15 not provided or deficiently provided, a sum to be proven at trial.

16 **FOURTH CAUSE OF ACTION**

17 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

18 **(Against All Defendants)**

19 64. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 65. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
22 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
23 not less than ten (10) minutes for each consecutive four (4) hour shift.

24 66. Defendants failed to provide Employees with timely rest breaks of not less than ten
25 (10) minutes for each consecutive four (4) hour shift.

26 67. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
27 (2016) “[D]uring required rest periods, employers must relieve their employees of all duties and
28 relinquish any control over how employees spend their time.” Defendants did not allow Employees

1 to leave the Defendants' location and this is directly at odds with *Augustus*, as it "tethered
2 [employees] by time and policy to a particular location" and therefore fails to relieve employees of
3 all work duties and employer control during rest periods. *Augusts*, 2 Cal.5th at 269.

4 68. Moreover, Defendants did not compensate Employees with an additional hour of pay
5 at each Employee's effective regular rate for each day that Defendants failed to provide them with
6 adequate rest breaks, as required under Labor Code § 226.7. Additionally, as detailed above, when
7 Defendants did pay rest period premiums, they did so at the normal regular rate of pay without
8 factoring in all forms or remuneration/compensation or by otherwise incorrectly calculating the
9 regular rate.

10 69. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
11 amount equal to one (1) hour of wages at their effective regular rates of pay for each day worked
12 without the required rest breaks, a sum to be proven at trial.

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO PAY VACATION WAGES**
15 **(Against All Defendants)**

16 70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 71. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
19 employment policy provides for paid vacation and an employee is terminated without having taken
20 off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in
21 accordance with said contract of employment or policy respecting eligibility or time served.

22 72. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
23 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
24 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.
25 Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant to Labor Code §
26 227.3.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

3 **(Against All Defendants)**

4 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 74. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
7 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
8 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
9 with the pay calculation under California Labor Code § 246(1).

10 75. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
11 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
12 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
13 calculating the amount of paid sick time due when sick time is used according to the requirements
14 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
15 rate, in violation of the law.

16 76. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
17 § 245 *et seq.* and §§ 245 *et seq.* and 246.

18 **SEVENTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 226(a)**

20 **(Against All Defendants)**

21 77. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 78. California Labor Code § 226(a) requires an employer to furnish each of his or her
24 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
25 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
26 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
27 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
28 given to the employee separately from the payment of wages; in either case the employer must give

1 the employee these statements twice a month or each time wages are paid.

2 79. Defendants failed to provide Employees with accurate itemized wage statements in
3 writing, as required by the Labor Code. Specifically, the wage statements by Defendants failed to
4 accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks,
5 reflected the incorrect hours worked due to the rounding. Employees' wage statements did not
6 include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set
7 forth all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements
9 provided to Employees were confusing and required Employees to engage in discovery and refer to
10 outside sources to verify whether their pay was correct and potentially resulting in a miscalculation
11 by the Employees. Moreover, Defendants failed in their affirmative obligation to keep accurate
12 records of the correct overtime wages based on proper regular rate calculations that included shift
13 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned,
14 and the total amount of compensation of their Employees. Additionally, the wage statements given
15 to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for
16 deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have
17 known were owed to Employees, as alleged hereinabove.

18 80. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
19 Employees suffered injuries, including among other things confusion over whether they received all
20 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
21 them to make mathematical computations to analyze whether the wages paid in fact compensated
22 them correctly for all hours worked.

23 81. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
24 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
25 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
26 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
27 and reasonable attorneys' fees.

28 82. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil

1 penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay
2 period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each
3 pay period.

4 83. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any
5 other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown
6 according to proof.

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
9 **IN VIOLATION OF LABOR CODE § 2802**

10 **(Against All Defendants)**

11 84. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
12 full herein.

13 85. Under Labor Code § 2802(a) an employer must indemnify its employees for all
14 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
15 of his or her duties, or of his or her obedience to the directions of the employer.

16 86. Employees incurred necessary expenditures in the performance of their job duties for
17 Defendants, power tools and hand tools which were necessary to perform their duties under
18 Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing
19 to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred
20 business expenses.

21 87. As a result of the unlawful acts of Defendants, Employees have been deprived of
22 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
23 plus interest and penalties thereon, attorneys' fees, and costs.

24 **NINTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 203**

26 **(Against All Defendants)**

27 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

89. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

90. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

91. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

92. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

94. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

95. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

96. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

97. Wage-and-hour laws express fundamental public policies. Paying employees their wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously

1 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
2 under substandard and unlawful conditions, and to protect law-abiding employers and their
3 employees from competitors who lower costs to themselves by failing to comply with minimum
4 labor standards.

5 98. Defendants have violated statutes and public policies. Through the conduct alleged
6 in this Complaint Defendants have acted contrary to these public policies, have violated specific
7 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
8 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and
9 all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
10 guaranteed to all employees under the law.

11 99. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
12 violation of the Business & Professions Code § 17200 *et seq.*

13 100. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
14 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
15 reasonable care should have known that their conduct was unlawful; therefore their conduct violates
16 the Business & Professions Code § 17200 *et seq.*

17 101. As a proximate result of the above-mentioned acts of Defendants, Employees have
18 been damaged, in a sum to be proven at trial.

19 102. Unless restrained by this Court Defendants will continue to engage in such unlawful
20 conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such
21 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
22 use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by
23 the Business & Professions Code, including but not limited to the disgorgement of such profits as
24 may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

25 **RELIEF REQUESTED**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
- 28 2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
2 the filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and
4 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of all unpaid wages, including overtime
6 and double-time pay, as may be proven;

7 5. For compensatory damages in the amount of the hourly wage made by Employees
8 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
9 years prior to the filing of this action, as may be proven;

10 6. For compensatory damages in the amount of the hourly wage made by Employees
11 for each day requisite rest breaks were not provided or were deficiently provided where no
12 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
13 be proven;

14 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

15 8. For penalties pursuant to Labor Code § 226.3, as may be proven;

16 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
17 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

18 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

19 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven

20 12. For restitution for unfair competition pursuant to Business & Professions Code
21 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

22 13. For compensatory damages in the amount of all previously unreimbursed business
23 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
24 from four (4) years prior to the original filing of this action, as may be proven;

25 14. For an order enjoining Defendants and their agents, servants, and employees, and
26 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
27 duties adumbrated in this Complaint;

28 15. For all general, special, and incidental damages as may be proven;

- 1 16. For an award of pre-judgment and post-judgment interest;
2 17. For an award providing for the payment of the costs of this suit;
3 18. For an award of attorneys' fees; and
4 19. For such other and further relief as this Court may deem proper and just.

5
6 DATED: October 6, 2025

D.LAW, INC.

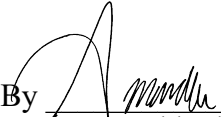
7
8 By  
9 Roman Shkodnik
10 Amanda Fazio
11 Attorneys for Plaintiff
12 MICHAEL HILESTUTHILL
13 and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: October 6, 2025

D.LAW, INC.

By  

Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
MICHAEL HILESTUTHILL
and the putative class