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Case #23CV414279
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

PEDRO MARTINEZ, an individual;
JORGE GUZMAN, an individual;
JUAN IBARRA MONTALVO, an
individual; on behalf of the other members
of the general public similarly situated and
the other aggrieved employees,

Plaintiffs,

v.

COPIA RESOURCES, INC. (d/b/a WASTE
REMEDY), a California corporation;
SAMUEL T. CHUNG, an individual; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 23CV414279

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES, INJUNCTIVE RELIEF,
AND CIVIL PENALTIES**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Provide Rest Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due at Separation;
7. Failure to Reimburse Necessary Business Expenses;
8. Unfair Competition; and
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiffs PEDRO MARTINEZ, JORGE GUZMAN, AND JUAN IBARRA MONTALVO (“Plaintiffs”), as individuals, and on behalf of the other members of the general public similarly situated and the other aggrieved employees, allege and complain against COPIA RESOURCES, INC. (d/b/a WASTE REMEDY), a California corporation, SAMUEL T. CHUNG, an individual, and DOES 1 through 10, inclusive, (collectively referred to as “Defendants”):

INTRODUCTION

1. Plaintiffs bring this First Amended Class and Representative Action Complaint for Damages, Injunctive Relief, and Civil Penalties (“FAC”) on behalf of themselves, the other similarly situated employees, and, pursuant to the California Labor Code Attorneys General Act of 2004 (“PAGA”), the other aggrieved employees, against Defendants COPIA RESOURCES, INC., SAMUEL T. CHUNG, and DOES 1 through 10 (collectively referred to as “Defendants”) for violations of California’s wage and hour laws. The violations alleged in this FAC stem from following actions committed by Defendants throughout the applicable statutes of limitations: failure to pay minimum wages; failure to pay overtime wages; failure to pay meal period premium pay for non-compliant meal periods; failure to pay rest period premium pay for non-compliant rest periods; failure to furnish accurate, itemized wage statements; failure to timely pay all wages to terminated employees; and failure to indemnify necessary business expenses.

2. Plaintiffs bring the First through Eighth Causes of Action individually and as a class action on behalf of themselves and similarly situated current and former employees who worked for Defendants during the applicable statutes of limitation (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully below). The Class consists of Plaintiffs and all the other persons who have been employed by Defendants in California as an hourly-paid, non-exempt employee during the statutes of limitations periods for the claims alleged in this FAC.

3. Plaintiffs bring the Ninth Cause of Action under the PAGA. As deputized representatives of the State of California, and on behalf of themselves and the other aggrieved employees who suffered wage and hour violations while working for Defendants during the applicable statutes of limitation periods, Plaintiffs seek the recovery of civil penalties for the violations alleged in this FAC.

1 4. Beginning at least four (4) years prior to the filing of this FAC and continuing through
2 the present (the “Class Period”), Defendants implemented uniform and standardized wage and hour
3 policies and practices that applied to Plaintiffs and others working as non-exempt hourly employees
4 in California.

5 5. In implementing these uniform and standardized wage and hour policies and practices,
6 which applied to Plaintiffs and the other similarly situated current and former non-exempt employees
7 who worked for Defendants in California during the Class Period, Defendants systematically violated
8 the California Labor Code, the applicable Industrial Wage Orders issued by the Industrial Welfare
9 Commission (“IWC”), and the California Business & Professions Code. Despite the requirements
10 contained in the relevant provisions of these bodies of law, throughout the statutory periods,
11 Defendants maintained a systematic and company-wide policy and practice of:

12 a. Failing to pay employees for all hours worked, including minimum wages and
13 overtime wages in compliance with the California Labor Code and IWC Wage Orders;

14 b. Failing to provide employees with timely and duty-free meal periods in
15 compliance with the California Labor Code and IWC Wage Orders, to maintain accurate records for
16 all meal periods taken or missed, and to pay an additional hour of pay at the employee’s regulation
17 rate for each workday that a meal period violation occurred;

18 c. Failing to authorize and permit employees to take timely and duty-free rest
19 periods in compliance with the California Labor Code and IWC Wage Orders and to pay an additional
20 hour of pay at the employee’s regular rate of pay for each workday a that rest period violation occurred;

21 d. Failing to maintain accurate records of the hours that employees worked;

22 e. Failing to provide employees with accurate, itemized wage statements
23 containing all the information required by the California Labor Code and IWC Wage Orders;

24 f. Willfully failing to pay employees all minimum wages, overtime wages, meal
25 period premium wages, and rest period premium wages owed to them within the time period specified
26 by California law when employment terminated;

27 g. Failing to indemnify employees for necessary business expenses incurred; and

28 h. Engaging in unfair, dishonest, and deceptive business practices by which honest

1 competition is destroyed or prevented in violation of California Business & Professions Code section
2 17200 et seq.

3 6. On information and belief, Defendants, and each of them were on actual and
4 constructive notice of the improprieties alleged in this FAC and intentionally refused to rectify their
5 unlawful policies. Defendants committed these violations willfully and deliberately.

6 7. As Plaintiffs' and the Class Members' employers, Defendants were and are legally
7 responsible for all of the unlawful conduct, policies, practices, acts and omissions alleged in the FAC.
8 Further, Defendants are responsible for each of the unlawful acts or omissions alleged in this FAC
9 under the doctrine of respondeat superior.

10 **JURISDICTION AND VENUE**

11 8. Plaintiffs, on behalf of themselves, the other similarly situated current and former non-
12 exempt hourly employees who worked for Defendants in California during the Class Period, and the
13 other aggrieved employees under the PAGA, bring this FAC for recovery of unpaid wages, statutory
14 penalties, equitable relief, and civil penalties under California Labor Code sections 201 to 204, 226,
15 226.7, 510, 512, 1182.12, 1194 et seq., 1197, 1198, 2802, IWC Wage Order No. 4, and California
16 Business & Professions Code section 17200 et. seq.

17 9. Plaintiffs bring this FAC pursuant to California Code of Civil Procedure section 382
18 because: the consent of all parties cannot be obtained; a question of common or general interest exists;
19 the parties are numerous; and it is impractical to bring all the parties before the court.

20 10. The monetary damages and restitution sought by Plaintiffs, as individuals, the other
21 similarly situated employees, the and other aggrieved employees under the PAGA, who worked for
22 Defendants in California during the Class Period, exceed the minimal jurisdiction limits of the
23 Superior Court of California and will be established according to proof at trial.

24 11. This Court has original jurisdiction over this FAC pursuant to the Article VI, Section
25 10, of the California Constitution, which grants the Superior Court of California "original jurisdiction
26 in all other causes," except those causes given by statute to other courts. The statutes under which
27 Plaintiffs allege the causes of action in this FAC do not specify any other jurisdictional basis.

28 12. This Court has personal jurisdiction over Defendants because they conduct business in

1 California.

2 13. Venue is proper in the County of Santa Clara pursuant to California Code of Civil
3 Procedure section 395.5. At all times relevant to this FAC, Defendants employed Plaintiffs and other
4 similarly situated current and former non-exempt hourly employees working Defendants in California
5 during the Class Period to perform work at numerous job sites in the County of Santa Clara.

6 **THE PARTIES**

7 **Plaintiffs**

8 14. At all times relevant to this FAC, Plaintiff PEDRO MARTINEZ worked as an hourly
9 non-exempt employee for Defendants in California during the Class Period. Defendants employed
10 Plaintiff MARTINEZ as a waste and recycle sorter and a route driver. Defendants classified Plaintiff
11 as a non-exempt hourly employee and paid him between \$18.50 and \$19.50 per hour. Plaintiff
12 MARTINEZ worked for Defendants from February 28, 2022, through the present.

13 15. At all times relevant to this FAC, Plaintiff JORGE GUZMAN worked as an hourly
14 non-exempt employee for Defendants in California during the Class Period. Defendants employed
15 Plaintiff GUZMAN as a waste and recycle sorter and a route driver. Defendants classified Plaintiff as
16 a non-exempt hourly employee and paid him \$19.50 per hour. Plaintiff GUZMAN worked for
17 Defendants from October 2022 through the present.

18 16. At all times relevant to this FAC, Plaintiff JUAN IBARRA MONTALVO worked as
19 an hourly non-exempt employee for Defendants in California during the Class Period. Defendants
20 employed Plaintiff IBARRA MONTALVO as a waste and recycle sorter and a route driver.
21 Defendants classified Plaintiff as a non-exempt hourly employee and paid him between \$19.50 and
22 \$20.50 per hour. Plaintiff IBARRA MONTALVO worked for Defendants from July 5, 2021, through
23 April 4, 2023.

24 **Defendants**

25 17. Defendant COPIA RESOURCES, INC. is a California Corporation that operates as a
26 vendor of environmental and waste management services for multi-family housing, commercial, and
27 retail businesses throughout the State of California, including Santa Clara County.

28 18. Defendant COPIA RESOURCES, INC.'s principal place of business is located in

1 Contra Costa County, but it also has other business locations, including a business location in Santa
2 Clara County.

3 19. Defendant COPIA RESOURCES, INC. also does business as WASTE REMEDY,
4 which is a name that was previously registered with the Secretary of State for the State of California
5 and subsequently changed in 2017 to its current name.

6 20. Defendant SAMUEL T. CHUNG is the founder and president of Defendant COPIA
7 RESOURCES, INC.

8 21. The true names and capacities of defendants DOES 1 through 10 inclusive, whether
9 corporate, associate, individual, or otherwise, are unknown to Plaintiffs and Plaintiffs therefore sue
10 these DOE defendants by fictitious names.

11 22. On information and belief, at all times relevant to this FAC, Defendants directly or
12 indirectly, or through agents or other persons, employed Plaintiffs and the other Class Members and
13 exercised control over their wages, hours, and working conditions.

14 23. Plaintiffs do not currently know the true names or capacities of the persons or entities
15 sued herein as DOES 1-10, inclusive, and therefore sues these defendants under fictitious names. Each
16 of the DOE Defendants was in some manner legally responsible for the damages suffered by Plaintiffs
17 and the Class as alleged in this FAC. When Plaintiffs ascertain the identifies of these DOE Defendants,
18 Plaintiffs will amend this FAC to set forth their true names and capacities, including any other
19 necessary information regarding their involvement in the violations alleged in this FAC.

20 24. At all times relevant to this FAC, the DOE Defendants named as DOES 1 – 10, were
21 residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant
22 number of the Class Members, including Plaintiffs, in the State of California. As such, each of the
23 DOE Defendants are liable for the unlawful acts alleged in this FAC and proximately caused the
24 injuries and damages to Plaintiffs and the other Class Members.

25 **CLASS ACTION ALLEGATIONS**

26 25. Plaintiffs are California residents, who worked for Defendants in the County of Santa
27 Clara and throughout various other counties in California, as waste and recycle sorters and as route
28 drivers. During the applicable statutory periods, Defendants classified Plaintiffs as non-exempt from

California's overtime requirements, and, during these times, Plaintiffs regularly worked more than 40 hours per workweek and more than 8 hours per workday.

26. Plaintiffs bring this FAC on behalf of themselves and all other similarly situated current and former non-exempt hourly employees who worked for Defendants in California during the Class Period and who were affected by Defendants' violations of the California Labor Code, IWC Wage Order No. 4, and Business and Professions Code section 17200 et seq.

27. Plaintiffs bring this FAC pursuant to California Code of Civil Procedure section 382 because: the consent of all parties cannot be obtained; a question of common or general interest exists (as defined below); the parties are numerous; and it is impractical to bring all the parties before the court.

28. **Relevant Time Period:** The Relevant Time Period is the time period beginning four years prior to the filing of the initial complaint in this action until the Court enters judgment.

29. **Class Definition:** The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending until the Court enters judgment.

30. At all times relevant to this FAC, Plaintiffs were members of the Class.

31. Members of the Class described above will be collectively referred to as "Class Members" in this FAC.

32. **Numerosity:** The Class Members are so numerous that joinder of all Class Members is impracticable. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs believe that the actual number exceeds the minimum required for numerosity under California law. The exact number of Class Members can be readily ascertained by inspecting Defendants' employment records.

33. **Commonality and Predominance:** Common questions of law and fact exist for all Class Members and predominate over any questions that affect only individual Class Members. Some of these common questions of law and fact are:

1 a. Whether Defendants had a corporate policy and/or practice of failing to pay
2 their hourly non-exempt employees in California for all hours worked;

3 b. Whether Defendants failed to pay minimum wages to Plaintiffs and the other
4 Class Members for all hours worked;

5 c. Whether Defendants failed to pay overtime wages to Plaintiffs and the other
6 Class Members for all overtime hours worked;

7 d. Whether Defendants willfully failed to pay wages, including minimum and
8 overtime wages, without abatement or reduction, in accordance with the California Labor Code and
9 IWC Wage Order No. 4;

10 e. Whether Defendants required Plaintiffs and other Class Members to work over
11 eight (8) hours per workday and/or over forty (40) hours per workweek and/or seven consecutive
12 workdays in a workweek and failed to pay the legally required overtime wages to Plaintiffs and the
13 other Class Members;

14 f. Whether Defendants had a corporate policy and/or practice of failing to pay
15 Plaintiffs and the other Class Members premium pay for non-compliant meal and rest periods (short,
16 late, interrupted, and/or missed altogether) in violation of California law;

17 g. Whether Defendants deprived Plaintiffs and the other Class Members of meal
18 and/or rest periods or required Plaintiffs and the other Class Members to work during meal and/or rest
19 periods without compensation;

20 h. Whether Defendants willfully failed to timely pay all wages due to Plaintiffs
21 and the other Class Members;

22 i. Whether Defendants willfully failed to pay all wages due to Plaintiffs and the
23 other Class Members within the required time upon their separation –discharge or resignation;

24 j. Whether Defendants willfully failed to provide accurate, itemized wage
25 statements to Plaintiffs and the other Class Members as required by California law;

26 k. Whether Defendants failed to reimburse Plaintiffs and the other Class Members
27 for necessary business-related expenses and costs;

28 l. Whether Defendants engaged in unfair business practices in violation of

1 California Business & Professions Code section 17200 et seq.;

2 m. Whether Plaintiffs and the other Class Members can recover compensatory
3 damages pursuant to the California Labor Code and IWC Wage Order No. 4; and

4 n. The appropriate amount of damages, restitution, and/or monetary penalties
5 resulting from Defendants' violations of California law.

6 34. **Typicality:** Plaintiffs' claims are typical of the claims of the other Class Members
7 because of Defendants' policies and/or practices of failing to comply with the California Labor Code,
8 IWC Wage Order No. 4, and the Business and Professions Code, as alleged in this FAC.

9 35. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each Class
10 Member, with whom he has a well-defined community of interest and typicality of claims, as alleged
11 in this FAC. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs'
12 attorneys, the proposed class counsel, are versed in the rules governing class action discovery,
13 certification, and settlement. Plaintiffs have and will continue to incur costs and attorneys' fees that
14 have and will necessarily be expended for the substantial benefit of each Class Member during the
15 prosecution of this FAC.

16 36. **Superiority:** A class action is superior to other available methods for the fair and
17 efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

18 37. **Public Policy Considerations:** Certification of this FAC as a class action will advance
19 public policy objectives. Employers throughout California regularly violate employment and labor
20 laws. Current employees however are often reluctant to assert their rights individually because of fear
21 of direct and/or indirect retaliation by their employers. Class actions, on the other hand, provide
22 anonymity to Class Members who are not specifically named as Plaintiffs in the action, which in turn
23 facilitates the vindication of their rights without fear of direct or indirect retaliation by their employers.

24 **GENERAL ALLEGATIONS**

25 **Failure to Pay Minimum Wages**

26 38. At all times relevant to this FAC, Defendants had a policy and/or practice of failing to
27 pay Plaintiffs and the other Class Members minimum wages for all hours worked, as required by
28 California law. Consequently, Plaintiffs and the other Class Members worked numerous off-the-clock

1 hours for Defendants during the Class Period without receiving compensation.

2 39. Defendants had a policy and/or practice of requiring Plaintiffs and the other Class
3 Members to work off the clock without receiving compensation.

4 40. First, Defendants had a policy and/or practice of not paying Plaintiffs and the other
5 Class Members for performing preliminary work activities. During the time between arrival at the
6 company warehouse and departure from the company warehouse, Plaintiffs and the other Class
7 Members performed numerous preliminary work activities, such as preparing the work truck and
8 gathering the necessary tools for the day. Defendants neither recorded the times Plaintiffs and the other
9 Class Members spent performing these preliminary work activities nor compensated Plaintiffs and the
10 other Class Members for performing these preliminary work activities.

11 41. Second, Defendants had a policy and/or practice of not paying Plaintiffs and the other
12 Class Members for performing postliminary work activities. Specifically, when Plaintiffs and the other
13 Class Members arrived back at Defendants' warehouse from the final job site, Plaintiffs and the other
14 Class Members performed numerous postliminary work activities, such as cleaning the work truck
15 and unloading and cleaning the work tools. Defendants neither recorded the time Plaintiffs and the
16 other Class Members spent performing these postliminary work activities nor compensated Plaintiffs
17 and the other Class Members for performing these postliminary work activities.

18 42. Third, Defendants had a policy and/or practice of not paying Plaintiffs and the other
19 Class Members for work performed during allotted times for meal periods. Specifically, Defendants
20 deducted thirty minutes for a first meal period from Plaintiffs and the other Class Members' time
21 worked even in instances when Plaintiffs and other Class Members worked through those supposed
22 lunch periods. Defendants neither recorded the time Plaintiffs and the other Class Members spent
23 performing work during their time allotment for meal periods nor compensated Plaintiffs and the other
24 Class Members for performing these work activities.

25 **Failure to Pay Overtime Wages**

26 43. At all times relevant to this FAC, Defendants had a policy and/or practice of failing to
27 pay all overtime compensation owed to Plaintiffs and the other Class Members, as required by
28 California law.

1 44. More specifically, Defendants' employees worked more than ten (10) hours per day
2 because of the heavy volume of work required to successfully attend to ongoing needs of Defendants'
3 customers. Defendants however did not compensate their employees all of their required overtime
4 wages because of Defendants' failure to pay their employees for all preliminary and postliminary
5 work that performed, as well as all of the work that they performed when they had to work through
6 meal periods.

7 45. Defendants consequently failed to pay Plaintiffs and the other Class Members all
8 overtime compensation for all hours Plaintiffs and the other Class Members worked more than eight
9 (8) hours in a workday and/or more than forty (40) hours in a workweek. Furthermore, Defendants
10 also consequently failed to pay all double time compensation owed to Plaintiffs and the other Class
11 Members for all hours Plaintiffs and the other Class Members worked more than twelve (12) hours in
12 a workday.

13 46. Defendants failed to pay all overtime and double time compensation owed to Plaintiffs
14 and the other Class Members because Defendants had a policy and/or practice of not paying Plaintiffs
15 and the other Class Members for all the preliminary and postliminary work activities that Plaintiffs
16 and the other Class Members worked "off-the-clock" during meal and rest periods.

17 47. As such, Defendants failed to pay Plaintiffs and the other Class Members all overtime
18 compensation for all hours that Plaintiffs and the other Class Members worked more than eight (8)
19 hours in a workday and/or more than forty (40) hours in a workweek. Furthermore, Defendants also
20 failed to pay Plaintiffs and the other Class Members all double time compensation for all hours that
21 Plaintiffs and the other Class Members worked more than (12) hours in a workday.

22 **Failure to Pay Premium Pay for Non-Compliant Meal Periods**

23 48. At all times relevant to this FAC, Defendants had a policy and/or practice of failing to
24 provide Plaintiffs and the other Class Members with compliant meal periods.

25 49. At all times relevant to this FAC, Defendants also had a policy and/or practice of failing
26 to provide Plaintiffs and the other Class Members with meal period premium pay when Defendants
27 failed to provide Plaintiffs and the other Class Members with compliant meal periods, as required by
28 California law.

1 50. On most workdays, Defendants failed to provide Plaintiffs and the other Class
2 Members with their first meal period before the end of the fifth hour of work in violation of California
3 law. In fact, Defendants had alarms set on company-provided cell phones given to route drivers that
4 would tell Class Members that their first meal period was to be taken at or after 10:00 AM, which
5 resulted in the first the meal period always being taken after the start of the fifth hour of work.
6 Additionally, if employees were in the middle of a job or at a customer location, Defendants' policy
7 and practice required their employees to delay their meal period until their work was fully complete.
8 As such, on most days, Plaintiffs and the other Class Members would take their meal periods at or
9 around the seventh or eighth hour of work, as their regular day would start at 3:45 AM.

10 51. Defendants' supervisors determined when Plaintiffs and the other Class Members
11 received meal periods and most of the time Defendants' supervisors did not permit Plaintiffs and the
12 other Class Members with the opportunity to take their first meal periods before the end of their sixth
13 hour of work.

14 52. In addition, Plaintiffs and the other Class Members did not complete their own time
15 sheets. To complete these time entries, Defendants added an entry for first meal periods to their time
16 records without confirmation or approval from Plaintiffs and the other Class Members, even in the
17 Plaintiffs and the other Class Members had to work through their breaks. Because of this practice,
18 Defendants' own time records are consistently lack an actual recording of exact start and stop times
19 for each first meal period allegedly taken by Plaintiffs and the other Class Members. Instead of
20 recording accurate start and stop times for their employees' meal periods, Defendants instead required
21 that Plaintiffs to use their personal cell phones to send a text message through a company-approved
22 mobile phone application of the times when they had allegedly taken their meal periods. Notably, these
23 "time entries," which were never included the official time entries, were always submitted at or around
24 the seventh or eighth hour of work. Defendants' supervisors and managers had actual knowledge of
25 the late "time entries" because as they themselves were included in and had access to this mobile
26 application.

27 53. Notably, Plaintiffs and the other Class Members only recorded two time entries per
28 day: Start and End time. All meal period entries were allegedly submitted by Defendants' agents.

1 Defendants could have had an electronic time system that would have allowed Plaintiffs and the other
2 Class Members to enter their meal period start and stop times on their own while out in the field, yet
3 chose not to do so for their convenience – choosing instead a system of texting that did not allow
4 employees the ability to audit their own time records or to enter a notation if they were not able to take
5 the full meal period or if they had to work through the meal period.

6 54. Defendants also failed to provide Plaintiffs and the other Class Members with a second
7 meal period on days when Plaintiffs and the other Class Members worked more than ten (10) hours in
8 a day in violation of California law. Notably, Defendants' time records are devoid of any time entry
9 or notation delineating or describing the taking of a second meal periods for eligible shifts.
10 Remarkably, Defendants never demanded any of their employees to even use their mobile time entry
11 application for second meal periods, even though their employees regularly worked more than ten
12 hours per day.

13 55. Defendants knew or should have known that, as result of their failure to track and record
14 all off-the-clock hours worked, their lack of recording of the beginning and ending of meal periods,
15 and the pressure imposed on workers to complete jobs quickly, that they failed provide Plaintiffs and
16 the other Class Members with timely and compliant first meal periods and failed provide Plaintiffs
17 and the other Class Members with second meal periods on days when Plaintiffs and the other Class
18 Members worked more than ten (10) hours in workday.

19 56. Defendants also knew or should have known that they did not pay Plaintiffs and the
20 other Class Members meal period premium pay for non-compliant first meal periods and for missed
21 second meal periods.

22 **Failure to Pay Premium Pay for Non-Compliant Rest Periods**

23 57. At all times relevant to this FAC, Defendants had a policy and/or practice of failing to
24 provide Plaintiffs and the other Class Members with compliant rest periods.

25 58. At all times relevant to this FAC, Defendants also had a policy and/or practice of failing
26 to provide Plaintiffs and the other Class Members with rest period premium pay when Defendants
27 failed to provide Plaintiffs and the other Class Members with compliant rest periods.

28 59. Furthermore, based on the nature of the work schedule and the pressure to complete

1 jobs quickly, Defendants failed to provide Plaintiffs and the other Class Members with their second
2 rest periods.

3 60. Notably, as alleged above, Defendants required employees to use a mobile phone
4 application to record their first and second meal period. Yet, there was no requirement that they stop
5 working. In fact, employees often texted work-related pictures during these “breaks.”

6 61. Defendants failed to pay Plaintiffs and the other Class Members rest period premium
7 pay for days when Defendants failed to provide Plaintiffs and the other Class Members with compliant
8 rest periods, as required by California law.

9 62. Moreover, Defendants failed to provide Plaintiffs and the other Class Members with a
10 third rest period on days when they worked more than ten hours per day.

11 63. Lastly, Defendants failed to provide Plaintiffs and the other Class Members with a
12 fourth rest period in days when they worked more than fourteen hours per day.

13 64. Defendants also failed to pay Plaintiffs and the other Class Members rest period
14 premium pay on days when Defendants failed to provide compliant third rest periods to Plaintiffs and
15 the other Class Members.

16 **Failure to Provide Compliant Wage Statements and Maintain Required Payroll Records**

17 65. Because Defendants had a policy and/or practice of failing to pay Plaintiffs and the
18 other Class Members for all hours worked and for all overtime hours worked at the correct overtime
19 rate, Defendants derivatively failed to provide Plaintiffs and the other Class Members with accurate
20 itemized wage statements during the Class Period.

21 66. First, Defendants failed to provide Plaintiffs and the other Class Members with
22 accurate, itemized wage statements listing all gross wages earned in violation of California Labor
23 sections 226, subdivision (a)(1).

24 67. Second, Defendants failed to provide Plaintiffs and the other Class Members with
25 accurate, itemized wage statements listing all net wages earned in violation of California Labor
26 sections 226, subdivision (a)(2).

27 68. Third, Defendants failed to provide Plaintiffs and the other Class Members with
28 accurate, itemized wage statements listing all meal period premiums and rest period premiums owed

1 to them. For purposes of California law, wages earned include meal and rest period premium pay.

2 **Failure to Timely Pay Final Wages Upon Termination**

3 69. Because Defendants had a policy and/or practice of failing to pay Plaintiff IBARRA
4 MONTALVO and the other Class Members for all hours worked and for all overtime hours worked
5 at the correct overtime rate, Defendants derivatively failed to pay Plaintiffs and the other Class
6 Members their final wages on their last day of employment or within seventy-two (72) hours of
7 resigning without prior notice for at least three years before the filing of this FAC, in violation of
8 California Labor Code sections 201, 202, and 203.

9 **Failure to Reimburse Business Expenses**

10 70. At all times Relevant to this FAC, Defendants had policy and/or practice of not
11 reimbursing Plaintiffs and the other Class Members for necessary business expenses, in violation of
12 California law.

13 71. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the other
14 Class Members with adequate tools, including but not limited to: car parts; tools for the job; and
15 various work clothing items. Plaintiffs and the other Class Members instead had to pay out-of-pocket
16 for these necessary expenses.

17 72. Defendants could have provided Plaintiffs and the other Class Members with the actual
18 tools for use on the job. Defendants also could have reimbursed Plaintiffs and the other Class Members
19 for out-of-pocket expenses in purchasing tools for use on the job. Instead, Defendants passed these
20 operating costs off onto Plaintiffs and the other Class Members in violation of California law.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **[Cal. Labor Code, §§ 1182.12, 1194, 1194.2, 1197, 1198;**

24 **IWC Wage Order No. 4-2001, § 4]**

25 **(Brought by Plaintiffs Against All Defendants)**

26 73. Plaintiffs and the other Class Members re-allege and incorporate by reference all
27 previous paragraphs of this FAC.

28 74. California Labor Code sections 1182.12 and 1197, and IWC Wage Order No. 4 section
14.

1 4, require Defendants to pay Plaintiffs and the other Class Members at least the state hourly minimum
2 wage for every hour Defendants required, suffered, or permitted Plaintiffs and the other Class
3 Members to work during the Class Period.

4 75. California Labor Code section 1198 makes unlawful the employment of an employee
5 under conditions the IWC prohibits.

6 76. California Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a),
7 provide that an employer that fails to pay its employees the legal minimum wage is liable to the
8 employees for the unpaid balance of the unpaid wages, interest at a rate of 10 percent per annum under
9 California Labor Code section 218.6, and liquidated damages in an amount equal to the unpaid wages.

10 77. California Labor Code section 558.1, subdivision (a), provides for liability for an “other
11 person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
12 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
13 violates, or causes to be violated, [Labor Code] Section[] . . . 1194.” California Labor Code section
14 558.1, subdivision (b), provides that an “other person acting on behalf of an employer” is “a natural
15 person who is an owner, director, officer, or managing agent” of an employer.

16 78. On information and belief, at relevant times for this FAC, Defendant SAMUEL T.
17 CHUNG is and was, , an owner, director, officer or managing agent of Defendant COPIA
18 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
19 or hours and days of work in the applicable IWC Wage Order and California Labor Code section 1194.
20 Defendant CHUNG is therefore individually liable for the alleged violations arising under California
21 Labor Code section 1194.

22 79. At all times relevant time to this FAC, Defendants had a policy and/or practice of failing
23 to pay Plaintiffs and the other Class Members at least the minimum wage for all hours Plaintiffs and
24 the other Class Members worked for Defendants in violation of California Labor Code sections
25 1182.12, 1194, 1197, including: time that Defendants required, suffered, or permitted Plaintiffs and
26 the other Class Members to work performing preliminary work activities; time that Defendants
27 required, suffered, or permitted Plaintiffs and the other Class Members to work during and through
28 meal periods; and time that Defendants required, suffered, or permitted Plaintiffs and the other Class

Members to work performing postliminary work activities.

80. Defendants knowingly and willfully failed to pay Plaintiffs and the other Class Members minimum wages for all hours they worked for Defendants as required by California law.

81. As a direct and proximate result of Defendants' failure to pay Plaintiffs and the other Class Members minimum wages for all hours that they worked for Defendants as required by California law, Plaintiffs and the other Class Members sustained damages.

82. Pursuant to California Labor Code sections 1194, 1194.2, and 1197, Plaintiffs and the other Class Members can recover from Defendants the unpaid balance of their unpaid minimum wages, as well as interest at a rate of 10 percent per annum under California Labor Code section 218.6, costs, liquidated damages in an amount equal to the wages unlawfully unpaid, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

[Cal. Labor Code, §§ 1194 and 1198; IWC Wage Order No. 4-2001, § 3]

(Brought by Plaintiffs Against All Defendants)

83. Plaintiffs and the other Class Members re-allege and incorporate by reference all previous paragraphs of this FAC.

84. California Labor Code sections 510, 1194, and 1198, and IWC Wage Order No. 4 require Defendants to pay Plaintiffs and the other Class Members overtime wages at the correct overtime rate for all overtime hours Defendants required, suffered, or permitted Plaintiffs and the other Class Members to work during the Class Period.

85. California Labor Code section 1198 makes unlawful the employment of an employee under conditions the IWC prohibits. Moreover, California Labor Code section 510 and IWC Wage Order No. 4 section 3 require employers to pay hourly, non-exempt employees overtime wages at one and-one-half times the employee's regular hourly rate for hours worked in excess of eight (8) hours in a workday or forty (40) hours in a workweek or for the first eight (8) hours worked on the seventh day of work, and to pay overtime wages at double the employee's regular hourly rate for hours worked in excess of twelve (12) hours in a workday or in excess of eight (8) hours in a workday on the seventh day of work.

1 86. California Labor Code section 1194, subdivision (a), entitles an employee to recover
2 the unpaid balance of all unpaid overtime compensation in a private right of action.

3 87. California Labor Code section 558.1, subdivision (b), provides that an “other person
4 acting on behalf of an employer” is “a natural person who is an owner, director, officer, or managing
5 agent” of an employer.

6 88. On information and belief, at relevant times for this FAC, Defendant SAMUEL T.
7 CHUNG is and was, an owner, director, officer or managing agent of Defendant COPIA
8 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
9 or hours and days of work in the applicable IWC Wage Order and California Labor Code section 1194.
10 Defendant CHUNG is therefore individually liable for the alleged violations arising under California
11 Labor Code section 1194.

12 89. At all times relevant to this FAC, Plaintiffs and the other Class Members regularly
13 worked overtime hours on a daily and weekly basis.

14 90. At all times relevant to this FAC, Defendants failed to pay overtime wages to Plaintiffs
15 and the other Class Members as required by the California Labor Code and IWC Wage Order No. 4
16 section 3 because of the following three policies and/or practices that applied to Plaintiffs and the other
17 Class Members’ employment with Defendants during the Class Period.

18 91. First, Defendants had a policy and/or practice of paying overtime for hours worked in
19 excess of ten (10) hours per workday, instead of hours worked in excess of eight (8) hours per workday,
20 in violation of California Law.

21 92. Second, Defendants had a policy and/or practice of failing to pay Plaintiffs and the
22 other Class Members for all the preliminary and postliminary work activities that Defendants suffered
23 or permitted Plaintiffs and the other Class Members to work “off-the-clock.”

24 93. Third, Defendants had a policy and/or practice of failing to pay Plaintiffs and the other
25 Class Members for work performed during the time allotted for meal periods. Defendants discounted
26 this time from Plaintiffs and the other Class Members’ work time when it should have added to the
27 total of overtime hours worked when worked more than 8 hours in a workday and when they worked
28 more than 40 hours in a workweek.

94. Defendants knowingly and willfully failed to pay Plaintiffs and the other Class Members overtime wages at the correct overtime rate for all overtime hours that Defendants required, suffered, or permitted Plaintiffs and the other Class Members to work during the Class Period.

95. As a direct and proximate result of Defendants' failure to pay Plaintiffs and the other Class Members all overtime wages at the correct overtime rate for all overtime hours that Defendants required, suffered, or permitted Plaintiffs and the other Class Members to work during the Class Period as required by California law, Plaintiffs and the other Class Members sustained damages.

96. Pursuant to California Labor Code section 1194, subdivision (a), Plaintiffs and the other Class Members can recover from Defendants their unpaid overtime compensation, as well as interest thereon at a rate of ten percent per annum under California Labor Code section 218.6, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

[Cal. Labor Code, §§ 226.7 and 512, subd. (a); IWC Wage Order No. 4-2001, § 10]

(Brought by Plaintiffs Against All Defendants)

97. Plaintiffs and the other Class Members re-allege and incorporate by reference all previous paragraphs of this FAC.

98. California Labor Code section 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

99. California Labor Code section 226.7, subdivision (b), makes it unlawful for employers to require hourly, non-exempt employees to work during any meal period mandated by an applicable IWC Order.

100. California Labor Code section 512 and IWC Wage Order No. 4 section 10, subsection (A), prohibit employers from employing a worker for more than five hours without providing a meal period of at least 30 minutes. California Labor Code section 512 also prohibits employers from employing a worker for more than 10 hours without providing a second meal period of at least 30 minutes.

101. California Labor Code section 512, subdivision (a), and IWC Wage Order No. 4,
18.

1 section 10, subsection (B), also make it unlawful for an employer, like Defendants, to require, suffer,
2 or permit an employee to work for a work period of more than ten (10) hours per day without providing
3 the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that
4 when the total hours worked is no more than twelve (12) hours, the second meal period may be waived
5 by mutual consent of the employer and the employee but only if the first meal period was not waived
6 by the employee.

7 102. Under both California Labor Code section 226.7, subdivision (c), and IWC Wage Order
8 No. 4 section 10, subsection (F), if an employer fails to provide an employee with a compliant meal
9 period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for
10 each workday that the employer did not provide the employee with a compliant meal period.

11 103. California Labor Code section 558.1, subdivision (a), provides for liability for an "other
12 person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
13 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
14 violates, or causes to be violated, [Labor Code] Section[] . . . 226.7."

15 104. California Labor Code section 558.1, subdivision (b), provides that an "other person
16 acting on behalf of an employer" is "a natural person who is an owner, director, officer, or managing
17 agent" of an employer.

18 105. On information and belief, at relevant times to this FAC, Defendant SAMUEL T.
19 CHUNG is and was, , an owner, director, officer or managing agent of Defendant COPIA
20 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
21 or hours and days of work in the applicable IWC Wage Order and California Labor Code section
22 226.7. Defendant CHUNG is therefore individually liable for the alleged violations arising under
23 California Labor Code section 226.7.

24 106. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the other
25 Class Members with meal periods that complied with California Labor Code sections 226.7 and 512
26 and IWC Wage Order No. 4. First, on most workdays, Defendants failed to provide Plaintiffs and the
27 other Class Members with a timely first meal period because Defendants' supervisors did not permit
28 Plaintiffs and the other Class Members with the opportunity to take their first meal periods before the

1 end of their fifth hour of work. Second, Defendants failed to provide Plaintiffs and the other Class
2 Members with second meal periods on days when Plaintiffs and the other Class Members worked
3 more than ten (10) hours in a workday.

4 107. At all times relevant to this FAC, Defendants failed to pay Plaintiffs and the other Class
5 Members premium pay when Defendants failed to provide them with compliant meal periods in
6 accordance with California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4.

7 108. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay
8 Plaintiffs and the other Class Members premium pay when Defendants failed to provide them with
9 compliant meal periods as required by California law.

10 109. As a direct and proximate result of Defendants' failure to pay premiums when
11 Defendants failed to provide Plaintiffs and Meal Period Class Member with compliant meal periods
12 as required by California law, Plaintiffs and the other Class Members sustained economic damages.

13 110. Pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order
14 No. 4 section 10, subdivision (F), Plaintiffs and the other Class Members can recover from Defendants
15 one additional hour of pay at Plaintiffs' and the other Meal Period Class Member's regular hourly rate
16 of pay for each workday that Defendants failed to provide them with a compliant meal period as
17 required by California law, interest thereon at a rate of seven percent per annum under California Civil
18 Code section 3287, and costs of suit.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST PERIODS**

21 **[Cal. Labor Code, § 226.7; IWC Wage Order No. 4-2001, § 11]**

22 **(Brought by Plaintiffs Against All Defendants)**

23 111. Plaintiffs and the other Class Members re-allege and incorporate by reference all
24 previous paragraphs of this FAC.

25 112. California Labor Code section 1198 makes unlawful the employment of an employee
26 under conditions the IWC prohibits.

27 113. California Labor Code section 226.7, subdivision (b), prohibits an employer from
28 requiring an employee to work during any rest period required by an applicable IWC Wage Order.

1 IWC Wage Order 4 section 11, subsection (A), requires employers to authorize and permit employees
2 who work three and one half or more hours in a workday to take a paid rest period of at least 10
3 minutes for every four hours worked or major fraction thereof, which insofar as practicable shall be in
4 the middle of each work period.

5 114. Under both California Labor Code section 226.7, subdivision (c), and IWC Wage Order
6 No. 4 section 11, subsection (D), if an employer fails to provide an employee with a compliant rest
7 period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for
8 each workday that the employer did not provide a compliant rest period.

9 115. California Labor Code section 558.1, subdivision (a), provides for liability for an "other
10 person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
11 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
12 violates, or causes to be violated, [Labor Code] Section[] . . . 226.7."

13 116. California Labor Code section 558.1, subdivision (b), provides that an "other person
14 acting on behalf of an employer" is "a natural person who is an owner, director, officer, or managing
15 agent" of an employer.

16 117. On information and belief, at relevant times to this FAC, Defendant SAMUEL T.
17 CHUNG is and was, an owner, director, officer or managing agent of Defendant COPIA
18 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
19 or hours and days of work in the applicable IWC Wage Order and California Labor Code section
20 226.7. Defendant CHUNG is therefore individually liable for the alleged violations arising under
21 California Labor Code section 226.7.

22 118. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the other
23 Class Members with rest periods that complied with the California Labor Code 226.7 and IWC Wage
24 Order No. 4. First, instead of providing the first rest period in the middle of the work period,
25 Defendants had a policy and/or practice of combining the first rest period with the first meal period
26 without any practical business justification during the Class Period. Second, based on the nature of the
27 work schedule and the pressure imposed on workers to complete jobs quickly, Defendants failed
28 provide Plaintiff and the other Class Members with their second rest periods during the Class Period.

119. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the other Class Members with the premium pay as required by California Labor Code section 226.7 when Defendants failed to provide them with compliant rest periods in accordance with California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4.

120. At all times relevant to this FAC, Defendants knowingly and willfully failed to pay Plaintiffs and the other Class Members premium pay when Defendants failed to provide them with compliant rest periods as required by California law.

121. As a direct and proximate result of Defendants' failure to pay premium when Defendants failed to provide Plaintiffs and Class Members with compliant rest periods as required by California law, Plaintiffs and the other Class Members sustained economic damages.

122. Pursuant California Labor Code section 226.7, subdivision (c), and IWC Wage Order No. 4 section (11), subsection (D), Plaintiffs can recover from Defendants one additional hour of pay at the Plaintiffs' and the other Rest Period Class Member's regular hourly rate of pay for each workday that Defendants failed to provide Plaintiffs and the other Class Members with a compliant rest period as required by California law, including interest thereon at a rate of seven percent per annum under California Civil Code section 3287, and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Labor Code § 226; IWC Wage Order No. 4-2001, § 6]

(Brought by Plaintiffs Against All Defendants)

123. Plaintiffs and the other Class Members re-allege and incorporate by reference all previous paragraphs of this FAC.

124. California Labor Code section 226, subdivision (a), requires employers to provide to their employees, on a semimonthly basis or at time the employer pays wages, with an accurate itemized wage statement in writing detailing the following information: (1) gross wages earned; (2) total hours worked by the employee ; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all a deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6)

1 the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his
2 or her social security number; (8) the name and address of the legal entity that is the employer; and
3 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee.

5 125. IWC Wage Order No. 4 section 6, subsection (B), similarly requires employers to
6 provide their employees, on a semimonthly basis or at time of the employer pays wages, with an
7 accurate itemized wage statement in writing detailing the following information: all deductions; the
8 inclusive dates of the period for which the employee is paid; the name of the employee or the
9 employee's social security number; and the name of the employer.

10 126. California Labor Code section 226, subdivision (e), provides that an employee who
11 suffers injury as a result of a knowing and intentional failure by an employer to comply with section
12 226, subdivision (a), may recover the greater of actual damages or the statutory penalty of fifty dollars
13 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
14 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
15 thousand dollars (\$4,000).

16 127. California Labor Code section 226, subdivision (e)(2)(B), provides that an employee is
17 deemed to suffer injury if the wage statement fails to provide certain information accurately and
18 completely and, because of that, the employee cannot promptly and easily determine such information
19 from the wage statement alone. In relevant part, California Labor Code section 226, subdivision
20 (e)(2)(B), provides that an employee is deemed to suffer injury if the wage statement does not
21 accurately and completely state the total number of hours worked by the employee, all applicable
22 hourly rates in effect during the pay period, and the corresponding number of hours worked at each
23 hourly rate.

24 128. Because Defendants had a policy and/or practice of failing to pay Plaintiffs and the
25 other Class Members and the other Class Members for all hours worked and for all overtime hours
26 worked at the correct overtime rate, Defendants intentionally and willfully failed to provide Plaintiffs
27 and the other Class Members with accurate itemized wage statements as required by California law.
28 First, Defendants failed to provide Plaintiffs and the other Class Members with accurate itemized wage

1 statements listing all gross wages earned in violation of California Labor sections 226, subdivisions
2 (a)(1). Second, Defendants failed to provide Plaintiffs and the other Class Members with accurate
3 itemized wage statements listing all net wages earned in violation of California Labor sections 226,
4 subdivisions (a)(2). Third, Defendants failed to provide Plaintiffs and the other Class Members with
5 accurate itemized wage statements listing all hourly rates in violation of California Labor sections 226,
6 subdivisions (a)(9).

7 129. California Labor Code section 558.1, subdivision (b), provides that an “other person
8 acting on behalf of an employer” is “a natural person who is an owner, director, officer, or managing
9 agent” of an employer.

10 130. On information and belief, at relevant times to this FAC, Defendant SAMUL T.
11 CHUNG is and was, an owner, director, officer or managing agent of Defendant COPIA
12 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
13 or hours and days of work in the applicable IWC Wage Order and California Labor Code section 226.
14 Defendant CHUNG is therefore individually liable for the alleged violations arising under California
15 Labor Code section 226.

16 131. Because Defendants had a policy and/or practice of failing to pay Plaintiffs and the
17 other Class Members and the other Class Members for all hours worked and for all overtime hours
18 worked at the correct overtime rate, Defendants derivatively failed to provide Plaintiffs and the other
19 Class Members with accurate itemized wage statements during the Class Period.

20 132. As a direct and proximate result of Defendants’ failure to provide Plaintiffs and the
21 other Class Members with accurate itemized wage statements as required by California law, Plaintiffs
22 and the other Class Members suffered injury and damages.

23 133. Specifically, Plaintiffs and the other Class Members were injured by Defendants’
24 intentional violation of California Labor Code section 226, subdivision (a), because they were denied
25 both their legal right and interest in receiving accurate, itemized wage statements under California
26 Labor Code section 226, subdivision (a). Plaintiffs and the other Class Members were injured by
27 Defendants’ intentional violation of California Labor Code section 226, subdivision (a), because it has
28 caused confusion over whether they received from Defendants all of the wages owed to them, in

1 addition to their difficulty and expense in reconstructing pay records and making mathematical
2 computations to analyze whether the wages paid to them did in fact compensate them for all hours
3 worked.

4 134. Plaintiffs and the other Class Members can recover from Defendants the greater of their
5 actual damages caused by Defendants' failure to comply with California Labor Code section 226,
6 subdivision (a), or an aggregate penalty not exceeding four thousand dollars per employee, reasonable
7 attorneys' fees, and costs of suit.

8 135. California Labor Code section 226, subdivision (h), authorizes courts to issue
9 injunctive relief to remedy violations of section 226, subdivision (a). Plaintiffs and the other Class
10 Members can obtain injunctive relief enjoining Defendants: (i) to immediately begin providing
11 Plaintiffs and the other Class Members itemized wage statements containing all of the information
12 required by California Labor Code section 226, subdivision (a); and (ii) to immediately provide all
13 Plaintiffs and the other members of the Class the information required by California Labor Code
14 section 226, subdivision (a), dating back to those employees' beginning of employment or to the start
15 of the applicable limitations period, whichever is further back in time.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

18 **[Cal. Labor Code, §§ 201, 202, and 203]**

19 **(Brought by Plaintiff IBARRA MONTALVO Against All Defendants)**

20 136. Plaintiffs and the other Class Members re-allege and incorporate by reference all
21 previous paragraphs of this FAC.

22 137. California Labor Code section 201 requires an employer who discharges an employee
23 to pay all compensation due and owing to that employee immediately upon the employee's discharge
24 from employment.

25 138. California Labor Code section 202 requires an employer promptly to pay all
26 compensation due and owing to an employee within 72 hours after that employee's employment
27 terminates, including by resignation.

28 139. California Labor Code section 203 provides that if an employer willfully fails to pay
25.

1 all compensation due promptly upon discharge or resignation, as required by sections 201 and 202,
2 the employer shall be liable for waiting time penalties in the form of continued compensation for up
3 to thirty (30) days.

4 140. California Labor Code section 558.1, subdivision (a), provides for liability for an “
5 person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
6 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
7 violates, or causes to be violated, [Labor Code] Section[] 203.”

8 141. California Labor Code section 558.1, subdivision (b), provides that an “other person
9 acting on behalf of an employer” is “a natural person who is an owner, director, officer, or managing
10 agent” of an employer.

11 142. On information and belief, at relevant times to this FAC, Defendant SAMUEL T.
12 CHUNG is and was, an owner, director, officer or managing agent of Defendant COPIA
13 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages
14 or hours and days of work in the applicable IWC Wage Order and California Labor Code section 203.
15 Defendant CHUNG is therefore individually liable for the alleged violations arising under California
16 Labor Code section 203.

17 143. As alleged in this FAC, the unpaid wages owed to Plaintiff IBARRA MONTALVO
18 and the other Class Members at the time of termination of their employment include unpaid regular,
19 overtime, and double time wages.

20 144. At all times relevant to this FAC, by failing to properly compensate Plaintiff IBARRA
21 MONTALVO and the other Class Members upon separation, including but not limited to Defendants’
22 failure to properly pay Plaintiff IBARRA MONTALVO and the other Class Members wages for all
23 hours worked when due, i.e. minimum wages, overtime wages, and double time wages, Defendants
24 willfully failed to pay all compensation owed to Plaintiff IBARRA MONTALVO and Class Members
25 in accordance with California Labor Code sections 201 and 202.

26 145. As a direct and proximate result of Defendants’ failure to pay all wages due upon
27 separation, Plaintiff IBARRA MONTALVO and the other Class Members sustained damages.

28 146. Plaintiff IBARRA MONTALVO and the other Class Members can recover from

1 Defendants the statutory penalty wages for each calendar day they were not paid their owed
2 compensation, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

5 **[Cal. Labor Code § 2802; IWC Wage Order No. 4-2001, § 8]**

6 **(Brought by Plaintiffs Against All Defendants)**

7 147. Plaintiffs and the other Class Members re-allege and incorporate by reference all
8 previous paragraphs of this FAC.

9 148. California Labor Code sections 2802, subdivision (a), requires employers to reimburse
10 their employees for all necessary expenditures incurred by their employees in direct consequence of
11 the discharge of their job duties or in direct consequence of their obedience to the directions of the
12 employer.

13 149. IWC Wage Order No. 4 section 8, subdivision (B), provides: “When the employer
14 requires the use of tools or equipment or they are necessary for the performance of a job, such tools
15 and equipment shall be provided and maintained by the employer, except that an employee whose
16 wages are at least two (2) times the minimum wage may provide and maintain hand tools and
17 equipment customarily required by the particular trade or craft in conformity with Labor Code Section
18 2802.”

19 150. California Labor Code section 558.1, subdivision (a), provides for liability for an “other
20 person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
21 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
22 violates, or causes to be violated, [Labor Code] Section[] . . . 2802.”

23 151. California Labor Code section 558.1, subdivision (b), provides that an “other person
24 acting on behalf of an employer” is “a natural person who is an owner, director, officer, or managing
25 agent” of an employer.

26 152. On information and belief, at relevant times to this FAC, Defendant SAMUEL T.
27 CHUNG is and was, an owner, director, officer or managing agent of Defendant COPIA
28 RESOURCES, INC. and violated or caused to be violated the provisions regulating minimum wages

1 or hours and days of work in the applicable IWC Wage Order and California Labor Code section 2802.
2 Defendant CHUNG is therefore individually liable for the alleged violations arising under California
3 Labor Code section 2802.

4 153. At all times relevant to this FAC, Defendants failed to provide Plaintiffs and the other
5 Class Members all tools, supplies and equipment necessary to perform their job duties, as well as
6 various work cloth items.

7 154. By requiring Plaintiffs and the other Class Members to pay for work-related expenses
8 without reimbursement, even though Plaintiffs' and the other Class Members' wages were not at least
9 twice the minimum wage, Defendants violated California Labor Code section 2802 and IWC Wage
10 Order No. 4 section 8.

11 155. Defendants knowingly and willfully failed to reimburse Plaintiffs and the other Class
12 Members for all necessary work-related expenses and costs.

13 156. As a direct and proximate result of Defendants' failure to reimburse Plaintiffs and the
14 other Class Members for all necessary work-related expenses and costs as required by California law,
15 Plaintiffs and the other Class Members sustained damages.

16 157. Pursuant to California Labor Code section 2802, subdivision (c), Plaintiffs and the
17 other Class Members can recover from Defendants their business-related expenses and costs incurred
18 during the course and scope of their employment plus interest accrued from the date on which they
19 incurred the necessary expenditures at a rate of seven percent per annum per California Civil Code
20 section 3287, reasonable attorneys' fees, and costs of suit.

21 **EIGHTH CAUSE OF ACTION**

22 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

23 **[Cal. Business & Professions Code, §§ 17200 et seq.]**

24 **(Brought by Plaintiffs Against All Defendants)**

25 158. Plaintiffs and the other Class Members re-allege and incorporate by reference all
26 previous paragraphs of this FAC.

27 159. As alleged in this FAC, Defendants' conduct, has been, and continues to be, unfair,
28 unlawful, and harmful to Plaintiffs, the other Class Members, and to the general public. Plaintiffs and

1 the other Class Members seek to enforce important rights affecting the public interest within the
2 meaning of Code of Civil Procedure section 1021.5.

3 160. As alleged in this FAC, Defendants' actions violate California law and constitute
4 unlawful business acts and practices in violation of California Business & Professions Code sections
5 17200 et seq.

6 161. A violation of California Business & Professions Code section 17200 et seq. may be
7 predicated on the violation of any state or federal law. In the present case, Defendants' policy and/or
8 practice of failing to pay all regular, overtime, and double-time wages due to Plaintiffs and the other
9 Class Members violates California Labor Code sections 1194 and 1198 and IWC Wage Order No. 4;
10 Defendants' policy and/or practice of not providing Plaintiffs and the other Class Members with meal
11 and rest period premiums for workdays that Plaintiffs and the other Class Members did not receive
12 compliant meal and rest periods violates California Labor Code sections 226.7 and 512, subdivision
13 (a), and IWC Wage Order No. 4; Defendants' policy and/or practice of not timely paying all wages
14 owed to Plaintiffs and the other Class Members upon resignation or termination violates California
15 Labor Code sections 201, 202, and 203; Defendants' policy and/or practice of not fully reimbursing
16 Plaintiffs and the other Class Members for necessary work-related expenses and costs incurred during
17 their employment violates California Labor Code sections 2800 and 2802 and IWC Wage Order No.
18 4; and Defendants' policy and/or practice of failing to provide accurate itemized wage statements
19 violates California Labor Code section 226 and IWC Wage Order No. 4.

20 162. As alleged in this FAC, Defendants' unlawful business acts and practices, involve, but
21 not necessarily limited to the loss of money and/or property.

22 163. Because of Defendants violations of the California Labor Code and IWC Wage Order
23 No. 4, Plaintiffs and the other Class Members sustained damages and/or injuries.

24 164. Pursuant to California Business & Professions Code sections 17200 et seq., Plaintiffs
25 and the other Class Members can recover from Defendants restitution in the amount of the wages
26 unlawfully withheld and retained by Defendants during the Class Period; a permanent injunction
27 requiring Defendants to pay all outstanding wages due to Plaintiffs and the other Class Members;
28 costs; and attorneys' fees, pursuant to California Code of Civil Procedure section 1021.5.

NINTH CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)

[Cal. Labor Code, §§ 2698, et seq.]

(Brought by All Plaintiffs Against All Defendants)

165. Plaintiffs re-allege and incorporate by reference all previous paragraphs of this FAC.

166. As alleged in this FAC, Defendants have committed several violations of the California Labor Code against Plaintiffs, the other Class Members, and the other aggrieved employees.

167. Plaintiffs on behalf of themselves and the other “aggrieved employees” under the PAGA bring the representative component of this FAC against Defendants for the recovery of civil penalties owed to Plaintiffs, the other aggrieved employees, and the State of California under the PAGA, as codified in California Labor Code section 2699, subdivisions (a) and (f). The civil penalties sought include: (1) \$100.00 for each initial violation for each failure to timely pay each employee and \$200.00 for each subsequent violation or willful or intentional violation for each failure to timely pay each employee, plus 25 percent of the amount unlawfully withheld, pursuant to California Labor Code section 210; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation of a failure to pay minimum wages pursuant to California Labor Code section 1197.1; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of a failure to provide an accurate itemized wage statement per employee per pay period pursuant to California Labor Code section 226.3; (4) \$50.00 for each initial violation for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover underpaid wages, and \$100.00 for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover underpaid wages, pursuant to California Labor Code section 558; (5) \$500 for failure to maintain accurate and complete records required by California Labor Code section 1174; and/or (6) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the California Labor Code for which no civil penalty is specifically provided, based on the following violations:

a. Defendants violated California Labor Code sections 1194, 1194.2, and 1197 by failing to pay Plaintiffs and the other aggrieved employees the statutory minimum wage for all hours

1 worked;

2 b. Defendants violated California Labor Code sections 204, 510, 558, 1194, and
3 1198 by failing to pay Plaintiffs and the other aggrieved employees all overtime compensation earned;

4 c. Defendants violated California Labor Code sections 226.7, 512, 516, and 558
5 by failing to authorize and permit all legally required meal and rest periods and failing to pay meal
6 and rest period premiums to Plaintiffs and the other aggrieved employees;

7 d. Defendants violated California Labor Code section 226 by failing to furnish
8 Plaintiffs and the other aggrieved employees with accurate and compliant itemized wage statements;

9 e. Defendants violated California Labor Code section 204 by failing to pay
10 Plaintiffs and the other aggrieved employees all earned wages at least twice during each calendar
11 month;

12 f. Defendants violated California Labor Code section 1174 by failing to maintain
13 accurate records on behalf of Plaintiffs and the other aggrieved employees;

14 g. Defendants violated California Labor Code sections 201, 202 and 203 by failing
15 to timely pay all final wages due to Plaintiffs and the other aggrieved employees; and

16 h. Defendants violated California Labor Code section 2802 by failing to
17 indemnify necessary expenditures due to Plaintiffs and the other aggrieved employees.

18 168. Plaintiffs, through their Counsel, have notified Defendants and the California
19 Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of
20 the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California
21 Labor Code section 2698 et seq. with respect to above violations of the California Labor Code. A true
22 and correct copy of Plaintiffs’ letter to the LWDA is attached hereto as **Exhibit 1**. Now that at least
23 sixty-five days have passed from Plaintiffs notifying the LWDA of these violations and the LWDA
24 has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted their
25 administrative requirements for bringing a claim under the PAGA with respect to these violations.

26 **REQUEST FOR A JURY TRIAL**

27 169. Plaintiffs and the other Class Members hereby demand a jury trial on all triable causes
28 of action.

PRAYER FOR RELIEF

170. WHEREFORE, Plaintiffs and the other Class Members pray for the following relief and judgment:

- a. For an order that the action be certified as a class action;
- b. For an order appointing Plaintiffs as representatives of the Class;
- c. For appointment of Macias Rodriguez Adams LLP as class counsel for all purposes;
- d. An award for compensatory damages including, but not limited to, lost and unpaid minimum, overtime, and double time wages, and unreimbursed necessary expenditures and/or losses incurred in direct consequence of Plaintiffs' and the other Class Members' discharge of their duties;
- e. An award for meal period premiums for non-compliant meal periods, pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order No. 4 section 10, subdivision (F);
- f. An award for rest period premiums for non-compliant rest periods, pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order No. 4 section 11, subdivision (D);
- g. An award for statutory penalties provided by law, including, but not limited to, those in California Labor Code sections 203 and 226, subdivision (e);
- h. An award for liquidated damages pursuant to California Labor Code section 1194.2, in an amount equal to the unpaid minimum wages;
- i. Restitution of all amounts owed, pursuant to California Business & Professions Code section 17200 et seq, including minimum, overtime, and double time wages and interest thereon.
- j. Disgorgement of profits and all other appropriate equitable relief authorized by California Business & Professions Code section 17203;
- k. Civil penalties authorized by the Private Attorneys General Act of 2004 in California Labor Code section 2699, subdivisions (a) and (f).
- l. Attorneys' fees and litigation expenses pursuant to California Labor Code

1 sections 218.5, 226, subdivision (h), 1194, subdivision (a), 2699, subdivision (g)(1), and 2802, and
2 California Code of Civil Procedure section 1021.5, and such other provisions as may be applicable;

3 m. Pre-judgment and post-judgment interest on all sums awarded;

4 n. Costs of suit; and

5 o. For such other and further relief as is equitable, just, and proper.

6
7 Dated: November 16, 2023

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9 

10 _____
11 JOSE MACIAS, JR.
12 HECTOR RODRIGUEZ
13 TRAVIS M. ADAMS

14 **MACIAS RODRIGUEZ ADAMS LLP**

15 Attorneys for Plaintiffs
16 PEDRO MARTINEZ, JORGE GUZMAN, and
17 JUAN MONTALVO
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EXHIBIT 1
NOTICE TO LWDA OF CALIFORNIA LABOR CODE VIOLATIONS



Macías Rodríguez Adams LLP

— ATTORNEYS AT LAW —

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April 14, 2023

VIA ELECTRONIC SUBMISSION

PAGAfiling@dir.ca.gov

State of California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA CERTIFIED MAIL

Copia Resources, Inc. dba Waste Remedy
9000 Crow Canyon Road, Suite 302
Danville, CA 94506

Amanda Garcia
1505 Corporation
CT Corporation System
330 N Brand Blvd.
Glendale, CA 91203

Re: Notice of Violations Pursuant to the Labor Code Private Attorneys General Act California Labor Code Section 2699.3

Dear Administrator:

This office represents Pedro Martinez, Jorge Guzman, and Juan Ibarra Montalvo ("Claimants") in connection with their claims under the California Labor Code against their current and former employer, Copia Resources, Inc. dba Waste Remedy ("Respondent"). On information and belief, Samuel T. Chun is the President and Principal of Copia Resources, Inc. and at all times relevant to this letter, was an owner, director, officer, or managing agent of Respondent pursuant to Labor Code section 558.1.

As required by California Labor Code section 2699.3, Claimants by way of this letter provide notice of their intent to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, pursuant to the Labor Code Private Attorneys General Act, codified in California Labor Code sections 2698 et seq. Respondent has various locations throughout California. Claimants work as non-exempt, hourly workers. Claimant Pedro Martinez worked for Respondent from on or about February 28, 2022, to the present. Claimant Jorge Guzman worked for Respondent

from on or about October 2022 to the present. Claimant Juan Ibarra Montalvo worked for Respondent from on or about July 5, 2021 through on or about April 4, 2023. Claimants Pedro Martinez and Jorge Guzman are still in the employ of Respondents.

During the entirety of their employment, and to date, Respondent deprived Claimants of all the protections guaranteed to non-exempt employees by the California Labor Code and the applicable Wage Order of the Industrial Welfare Commission ("IWC").

Pursuant to the Labor Code Private Attorneys General Act, Claimants therefore seek relief on behalf of themselves, the State of California, and other persons who were employed by Respondent in California as non-exempt, hourly-paid employees and who received at least one wage statement during the relevant statutory time period ("aggrieved employees").

Uniform Payroll and Human Resources Practices

Respondent is a California corporation, with multiple facilities throughout California. Respondent operates as a waste management company that focuses on assisting its clients address and solve direct and collateral issues that arise with refuse/garbage/recycling/composting requirements. Respondent employs individuals such as Claimants to handle door to door waste management operations for its customers, including in the roles of waste and recycle sorters and as route drivers. Respondent was originally registered as a corporation at or around December 2015 and its principal place of business is listed as 9000 Crow Canyon Road, Suite 302, Danville, CA 94506.

The primary job duties and responsibilities of Claimants and the other aggrieved employees consist of, but are not limited to, traveling to customer locations to collect and manage refuse/garbage/recycling/composting. Claimants and the other aggrieved employees performed their job duties under significant time pressure and a significant amount of these duties while "off-the-clock," and were not properly compensated for all hours worked in accordance with the California Labor Code, as will be further demonstrated below.

Upon information and belief, Respondent had a centralized human resources (HR) department and failed to maintain compliant policies and practices as it relates to all its non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees.

Upon information and belief, during the relevant time period, Respondent maintained consistently noncompliant scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees. This included failing to provide hourly workers with all necessary meal and rest periods, including second and third meal periods and third and fourth rest periods whenever they worked over ten (10) hours in one day.

Upon information and belief, during the relevant time period, Respondent maintained uniform, standardized payroll practices and procedures, including the same methods and formulas for the calculation of wages, for all non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees. In addition, Respondent issued the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees.

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the fixed minimum wage is unlawful. Compensable work time is defined by the applicable IWC Wage Order 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."

Respondent did not pay Claimants and other aggrieved employees minimum wages for all hours worked. Claimants and the other aggrieved employees worked numerous off-the-clock hours without receiving compensation, including off-the-clock time they were forced to work during their meal and rest periods. Claimants and other aggrieved employees were not compensated for this time since Respondent failed to adequately record and keep track of the hours Claimants and other aggrieved employees worked.

In view of the foregoing, Respondent failed to pay at least minimum wages to Claimants and other aggrieved employees for all the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code sections 558, 1197.1 and/or 2699, subdivisions (f) and (g).

Unpaid Overtime
Violation of California Labor Code Sections 510 and 1198

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees who work more than eight (8) hours in a workday or more than forty (40) hours in a workweek at the rate of one and a half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours in a day or in excess of forty (40) hours in a workweek.

Respondent failed to pay all overtime compensation owed to Claimants and other aggrieved employees. During the relevant time period, Respondent did not pay Claimants and other aggrieved employees all overtime compensation for all of the hours they worked in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek.

Respondent failed to pay all overtime compensation owed to Claimants and other aggrieved employees because the Respondent had a policy and practice of not properly tracking all hours worked – including work time performed during meal periods that Respondent required of Claimants and other aggrieved employees. Claimants and other aggrieved employees regularly worked long hours in order to meet the scheduling demands of Respondent. This included working shifts that began at 3:45 a.m. and ended as late as 4:00 p.m. or 5 p.m. Claimants and other aggrieved employees regularly worked more than ten (10) hours in one day and also regularly worked shifts that were longer than twelve (12) hours. Whenever Claimants and other aggrieved employees worked eight (8) hours or twelve (12) hours, Respondent failed to pay them the correct overtime and double time rate for all hours worked over eight (8) or twelve (12) in one day.

Respondent's failure to pay Claimants and other aggrieved employees the proper overtime and double time compensation violates California Labor Code sections 510 and 1198 and the applicable

IWC Wage Order. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code sections 558, and/or 2699, subdivisions (f) and (g).

Failure to Provide Meal Periods
Violation of California Labor Code Sections 226.7, 512, Subdivision (a), and 1198

California Labor Code sections 226.7, 512, subdivision (a), and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each workday that a meal period is not provided. Pursuant to California Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Order, an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start before the end of the fifth hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.). California Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate of pay, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the employee did not waive the first meal period.

Respondent failed to provide Claimants and other aggrieved employees with compliant meal periods as they were regularly late, short, and/or interrupted. Respondent regularly required Claimants and other aggrieved employees to work in excess of five (5) consecutive hours a day without providing a 30-minute, timely, continuous and uninterrupted, duty-free meal period for every five hours of work. Notably, Respondent only provided Claimants and other aggrieved employees with one meal period regardless of the duration of their shift. Respondent did not provide Claimants and other aggrieved employees with a second meal period whenever they worked over ten (10) hours in one day or a third meal period whenever they worked over fifteen (15) hours in one day.

Further, Respondent failed to provide Claimants and other aggrieved employees with meal period premium pay when Claimants and other aggrieved employees did not receive compliant meal periods because Respondent prioritized business demands and fulfilling customer orders over the health and safety of Claimants and other aggrieved employees and had a practice and policy of not providing second and third meal periods.

In view of the foregoing, Respondent failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code sections 558 and/or 2699, subdivisions (f) and (g).

Failure to Provide Rest Periods
Violation of California Labor Code Sections 226.7 and 1198

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 273.)

Respondent had a policy and practice of not providing compliant rest periods to Claimants and other aggrieved employees. Respondent failed to provide Claimants and other aggrieved employees with compliant rest periods as they were short, late and/or interrupted, or as was more often the case, not provided at all. Respondent regularly required Claimants and other aggrieved employees to work in excess of four (4) consecutive hours a day without Respondent authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours). Notably, Respondent only provided Claimants and other aggrieved employees with a maximum of two rest periods regardless of the duration of their shift. Respondent did not provide Claimants and other aggrieved employees with a third rest period whenever they worked over ten (10) hours in one day or a fourth rest period whenever they worked over fourteen (14) hours in one day.

Respondent did not pay Claimants and other aggrieved employees rest period premium pay on days when their rest periods were not provided in accordance with California law.

In view of the foregoing, Respondent failed to provide all rest periods in violation of California Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code sections 558 and 2699, subdivisions (f) through (g).

Non-Compliant Wage Statements
Violation of California Labor Code Sections 226, Subdivision (a)

California Labor Code section 226, subdivision (a), requires employers to make, keep, and provide true, accurate, and complete employment records.

California Labor Code section 226, subdivision (e), provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in section 226, subdivision (a), then the employee can recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000.

Furthermore, Labor Code section 226.3 provides that any employer who violates section 226, subdivision (a), shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records per section 226, subdivision (a).

In the present case, the wage statements Claimants and other aggrieved employees received failed to capture all of their work time, including pre- and post-shift duties such as when they responded to Company management after work hours. Additionally, Respondent failed to calculate the correct overtime rate for hours worked over eight (8) in one day or forty (40) in one week. Further, Respondent's wage statements failed to itemize the amount of vacation time accrued by Claimants and other aggrieved employees. Lastly, Respondent failed to compensate and provide Claimants and other aggrieved employees with meal and rest period premium pay as detailed above.

As such, Respondent failed to provide Claimants and other aggrieved employees with accurate itemized wage statements, resulting in violations of California Labor sections 226, subdivisions (a)(1), (2), (5) and (9).

In view of the foregoing, Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs per Labor Code sections 226.3 and 2699, subdivision (a).

**Failure to Maintain Accurate Payroll Records
Violation California Labor Code Sections 1174, Subdivision(d), and 1198**

California Labor Code section 1174, subdivision (c), provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and subdivision (d) provides an employer must "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . ."

California Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174, subdivision (d).

Because Respondent failed to record all the off-the-clock hours worked by Claimants and other aggrieved employees during the relevant time period, Respondent derivatively failed to maintain accurate payroll records showing all of the daily hours worked by and all the wages paid to Claimants and other aggrieved employees in violation of California Labor Code 1174, subdivision (d).

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 also provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period and each split shift interval.

Because Respondent failed to record all the off-the-clock hours worked by Claimants and other aggrieved employees during the relevant time period, Respondent likewise derivatively violated California Labor Code section 1198 for failing to keep accurate records of work period start and stop times for Claimants and other aggrieved employees.

Because Respondent failed to provide the accurate number of total hours worked on wage statements, Claimants and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Claimants and other aggrieved employees had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code sections 1174.5 and 2699, subdivisions (a), (f) and (g).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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

California Labor Code section 210, subdivision (a)(1), provides that an employer that violates California Labor Code section 204 is liable for a civil penalty of one hundred dollars (\$100) for each failure to pay each employee for an initial violation.

For a subsequent or a willful or intentional violation of California Labor Code section 204, California Labor Code section 210, subdivision (a)(2), provides that an employer is liable for a civil penalty of two hundred dollars (\$200), plus 25 percent of the amount unlawfully withheld.

As discussed above, during the relevant time period, Respondent failed to pay Claimants and other aggrieved employees all compensation owed to them, including, but not limited to, minimum wages, overtime wages, double time wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Claimants and aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per Labor Code sections 210 and 2699, subdivision (a).

**Failure to Timely Pay Final Wages Upon Termination
Violation of California Labor Code 201, 202, and 203**

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

California Labor Code section 256 provides: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

During the relevant time period, Respondent failed to pay Claimant Juan Ibarra Montalvo and other aggrieved employees all compensation due to them. Accordingly, Respondent willfully failed to pay Claimants and other aggrieved employees who are no longer employed by Respondent all their earned wages, including, but not limited to, minimum wages, overtime wage, double time wage, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of leaving Respondent's employ in violation of California Labor Code sections 201, 202, and 203.

Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per Labor Code sections 256 and 2699, subdivision (a).

**Unreimbursed Business Expenses
Violation of California Labor Code Section 2802**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off the cost of doing business and operating expenses on to its employees. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.) The applicable IWC Wage Order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft in conformity with Labor Code Section 2802."

During the relevant time period, Respondent failed to provide Claimants and other aggrieved employees with adequate tools, including but not limited to: all necessary gas whenever they needed to purchase gas for Respondent's vehicles and were without a Company gas card, car parts, cellphones to communicate with management regarding ongoing business needs (for example, to text supervisors regarding work, overtime and other work demands), and uniform items including shirts, pants and sweaters/jackets. Claimants and other aggrieved employees instead had to pay out-of-pocket for these necessary expenses.

Respondent could have provided Claimants and other aggrieved employees with the actual tools for use on the job. Respondent also could have reimbursed employees for out-of-pocket expenses in

purchasing such items and tools for use on the job. Instead, Respondent passed these operating costs off onto Claimants and other aggrieved employees in violation of California law. As such, Respondent had and continues to have a Respondent-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

Respondent's policy and/or practice of passing its operating costs on to Claimants and other aggrieved employees by requiring that they purchase their own tools for use on the job violates California Labor Code section 2802. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code section 2699, subdivisions (f) and (g).

**Failure to Provide Notice of Material Terms of Employment
Violation of California Labor Code Section 2810.5, Subdivision (a)**

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

Effective January 1, 2015, an employer's written notice per section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, Respondent failed to provide Claimants and other aggrieved employees written notice that lists all the requisite information set forth in California Labor Code section 2810.5, subdivision (a)(1)(A) through (C).

Respondent's failure to provide Claimants and other aggrieved employees with written notice of basic information about their employment with Respondent violates California Labor Code section 2810.5. Claimants and other aggrieved employees can therefore recover civil penalties, attorneys' fees, and costs, per California Labor Code section 2699, subdivisions (f) and (g).

Violation of California Labor Code Section 558, Subdivision (a)

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

subdivision (c), provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

At all relevant times Respondent was an employer or person acting on behalf of an employer(s) who violated Claimants' and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Claimants seek the remedies set forth in California Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Specifically, per the Labor Code Private Attorneys General Act, and in particular California Labor Code sections 2699, subdivision (a), 2699.3, subdivision (a), and 2699.3, subdivision (c), 2699.5, and 558, Claimants, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Respondent for violations of California Labor Code sections 201, 202, 203, 204, 226, subdivision (a), 226.7, 351 510, 512, subdivision (a), 1174, subdivision (d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Claimants seek all applicable civil penalties related to these violations of the California Labor Code per the Labor Code Private Attorneys General Act. Thank you for your attention to this matter. If you have any questions, please contact me at the address below:

Macias Rodriguez Adams LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

Very truly yours,

A handwritten signature in blue ink, appearing to read "J Macias", is positioned above the typed name.

Jose Macias, Jr.
Managing Partner