

Tuvia Korobkin, Esq. # 268066
 tuvvia@abramsonlabor.com
 Rijenea Appling, Esq. # 346329
 rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
 11846 Ventura Boulevard, Suite 100
 Studio City, California 91604
 Tel: (213) 493-6300
 Fax: (213) 723-2522

Attorneys for Plaintiff

FILED
 Superior Court of California
 County of Alameda

08/09/2023

Clad Pike, Executive Officer / Clerk of the Court

By: D. Drew Deputy
 D. Drew

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

SEBASTIAN CARRILLO, on behalf of himself
 and all others similarly situated,

Plaintiff,

vs.

EAGLE SYSTEMS INTERNATIONAL, INC.
 DOING BUSINESS IN CALIFORNIA AS
 SYNERGY COMPANIES; and DOES 1 through
 100, Inclusive,

Defendants.

Case No. 23CV033269

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT FOR:**

- (1) **FAILURE TO PAY OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (2) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 1198)**
- (3) **FAILURE TO REIMBURSE
 BUSINESS EXPENSES (LABOR
 CODE §§ 2802, 2804);**
- (4) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS. &
 PROF. CODE § 17200, *et seq.*)**
- (7) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Sebastian Carrillo (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Class and Representative Action Complaint against Eagle Systems
3 International, Inc. doing business in California as Synergy Companies; and Does 1 through 100,
4 inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business & Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
9 510, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq*; and Industrial Welfare Commission Wage
10 Order No. 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This
11 class action is brought pursuant to Code of Civil Procedure section 382. This Court has
12 jurisdiction over Defendants’ violations of the Labor Code because the amount in controversy
13 exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Alameda County. Defendants own, maintain offices, transact business, have an agent
18 or agents within Alameda County, and/or otherwise are found within Alameda County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
23 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
24 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
25 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
26 by Labor Code §§ 201-204, 226, 226.7, 510, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq*;
27 Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 16, which
28 sets employment standards for employees in on-site construction occupations.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as an energy efficiency contractor based in Alameda County, and that they employed
4 Plaintiff and other similarly situated non-exempt employees within the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 17).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately March 2022 until approximately October 2022.

10. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but Defendants failed to pay them overtime compensation at one-and-one-half times (or two times in the case of double-time) their "regular rate" of pay as required under Labor Code § 510 and Wage Order 16. Specifically, Plaintiff and other non-exempt employees earned performance bonuses and/or other forms of compensation not excludable from the "regular rate" of pay (these forms of pay are hereinafter referred to collectively as "Incentive Pay"), and Defendants failed to incorporate Incentive Pay into the "regular rate" – or failed to incorporate it properly – when paying overtime wages. For example, in the pay period of May 30 to June 12, 2022, Plaintiff's wage statement indicates that he worked 1.41 hours of overtime and also earned a performance bonus of \$161.60. However, Defendants paid Plaintiff's overtime hours at a rate of \$25.50, which was 1.5 times Plaintiff's *base* hourly rate of \$17.00. As another example, during the pay period of May 16 through May 29, 2022, Plaintiff's wage statement indicates that he worked 67.29 Regular hours and 1.92 Overtime hours, for a total of 69.21 hours. That same wage statement reflects that Plaintiff earned a performance bonus of \$70.95, and that Defendants again paid Plaintiff his overtime hours at \$25.50 per hour, which was 1.5 times Plaintiff's *base* hourly rate of \$17.00. Defendants should have paid Plaintiff an additional \$0.98 as the overtime premium on the bonus ($\$70.95 \text{ bonus} / 69.21 \text{ total hours worked} = \1.025 ; $\$1.025 / 2 = \0.513 overtime premium per hour on the bonus; $\$0.513 * 1.92 \text{ overtime hours} = \0.98). However, Defendants instead paid Plaintiff only \$0.52 in "Performance OT Premium." Similarly, during the pay period of June 13 through 26, 2022, based on the figures on Plaintiff's wage statement he should have been paid approximately \$7.64 in additional overtime on his \$328.75 bonus, but Defendants paid him only \$3.37 in "Performance OT Premium."

11. In addition to under-paying overtime wages, Defendants' failure to incorporate Incentive Pay into the "regular rate" has also resulted in a failure to compensate Plaintiff and other aggrieved employees for paid sick time at Plaintiff's and other aggrieved employees' "regular rate of pay" as required under California law. For example, during the pay period of May 30 to June 12, 2022, Plaintiff was paid a bonus of \$161.60, and was also paid 8.0 hours of sick

1 pay (denoted as “SICK” on his wage statement) at his *base* rate of pay of \$17.00 per hour, rather
2 than Plaintiff’s “regular rate of pay” as required under Labor Code § 246(l)(1) (“Paid sick time
3 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
4 workweek in which the employee uses paid sick time...”). As alleged herein, Defendants have
5 failed to incorporate Plaintiff’s and other aggrieved employees’ earned “Incentive Pay” into their
6 “regular rate” and in doing so, Plaintiff and other aggrieved employee have been underpaid for
7 their sick time.

8 12. Defendants have also failed to authorize and permit compliant rest periods to
9 Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and
10 permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, because,
11 *inter alia*, the workload imposed on Plaintiff and other employees often made it impracticable to
12 take all rest periods to which they were entitled. Defendants, however, have failed to pay the rest
13 period premiums required by Labor Code § 226.7. Defendants did make payments to Plaintiff
14 denoted as “Rest Period Pay Additive,” but these payments were not made in increments of one
15 hour of pay, and therefore they were not rest period premium payments.

16 13. Indeed, it is unclear from the wage statements themselves what the “Rest Period
17 Pay Additive” payments were for. The wage statements include “0.00” under the “Unit” column
18 and simply include an amount under the “Rate” column, which always matches the “Gross” pay
19 amount for the “Rest Period Pay Additive.” As noted above, these payments are not paid in
20 increments of hours of pay (indeed, they are consistently *below* one hour’s worth of pay), and
21 therefore they do not appear to be rest period premiums. If they are separate pay for rest periods,
22 then the wage statements issued to Plaintiff and other non-exempt employees are facially deficient
23 because they fail to include the rate of pay and the number of hours worked at that rate, in violation
24 of Labor Code § 226(a)(9); rather, they just include a gross amount paid.

25 14. Defendants have also failed to reimburse Plaintiff and other employees for
26 expenses they incurred in the course of their employment. Specifically, during the initial 90-day
27 probationary period, Defendants required Plaintiff and other employees to use a cell phone app
28 called UKG to clock in and out for their shifts. Defendants did not provide Plaintiff and other

employees with an alternative method for clocking in and out and in doing so, forced Plaintiff and other non-exempt employees to use their personal cellphones to track their working hours. Plaintiff was also required to use his personal cellular phone to call or text-message his managers/supervisors and regularly communicate with clients as well. Despite requiring Plaintiff to use his personal cellular phone for work-related purposes, Defendants failed to reimburse Plaintiff for any portion of his personal cellular phone bill, in violation of Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

15. As a result of Defendants' failure to pay all overtime wages, as well as Defendants' failure to pay rest period premium wages owed, Defendants failed to pay all final wages owed to Plaintiff and other former non-exempt employees at the separation of their employment.

16. As a further result of Defendants' failure to pay all overtime wages, as well as Defendants' failure to pay rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff. In addition, the wage statements issued to Plaintiff and other non-exempt employees are facially deficient as explained above, in that they failed to accurately report the total hours worked and/or all applicable hourly rates in effect during the pay period, in violation of Labor Code § 226(a)(9), in those pay periods when they included payments for "Rest Period Pay Additive."

CLASS ACTION ALLEGATIONS

17. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and earned Incentive Pay in a corresponding pay period, at any time from four years prior to the filing of this action through the present.¹

¹ A prior class action settlement in *Eagle Systems Wage and Hour Cases*, JCCP 5177, seeks to resolve certain wage and hour claims through December 31, 2020. To the extent that settlement receives final approval and putative class members in this action were also participating class members in that prior settlement, the relevant time period for any claims resolved through that settlement would start on January 1, 2021.

b. The Rest Period Class consists of all of the Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, at any time from four years prior to the filing of this action through the present.

c. The Wage Statement Class consists of all members of the Overtime Class and/or Rest Period Class who received a wage statement at any time from one year prior to the filing of this action to the present; and/or any employees of Defendants who received a wage statement that included an entry for "Rest Period Pay Additive," during the one year immediately preceding the filing of this action through the present.

d. The Waiting Time Class consists of all members of the Overtime Class and/or the Rest Period Class, who are no longer employed by Defendants and who last worked for Defendants at any time from three years prior to the filing of this action through the present.

e. The Expense Reimbursement Class consists of all of Defendants' employees who were required to use their personal cell phones for work purposes, at any time from four years prior to the filing of this action to the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;

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- ii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- iii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- iv. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' overtime, wage statement, rest period, expense reimbursement, and final wage policies/practices. As such, common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was subject to Defendants' uniform rest period policies/practices, was furnished with inaccurate wage statements, was deprived of all final wages upon his separation of employment from Defendants, and was not reimbursed for all expenses incurred in carrying out his job duties for Defendants.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class member to pursue an individual remedy would discourage assertion of claims by employees who would be disinclined to file an action against their employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual Class members are not sufficiently large to warrant vigorous individual prosecution considering all of the costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

1 26. At all times relevant herein, Defendants were required to properly compensate
2 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
3 Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an
4 employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess
5 of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours
6 on the seventh consecutive workday in a workweek. Wage Order 16, § 3 also requires an
7 employer to pay an employee double the employee’s regular rate of pay for work in excess of 12
8 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the
9 workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but
10 did not compensate them at one and one-half times (or two times) their regular rate of pay for
11 such hours.

12 27. The foregoing policies and practices are unlawful and create entitlement to
13 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
14 premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of
15 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
16 Civil Procedure § 1021.5.

17 **SECOND CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 29. Labor Code §§ 226.7 and 516, and Wage Order 16, § 11 establish the right of
22 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
23 (4) hour period worked, or major fraction thereof.

24 30. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest
25 Period Class members to take their legally entitled rest periods. Defendants also failed to
26 compensate Plaintiff and Rest Period Class members with a rest period premium for each rest
27 period to which they were entitled while working.

28 ///

31. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

FAILURE REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. At all relevant times, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

34. At all relevant times, Defendants were subject to Labor Code § 2804, which states, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

35. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

36. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered damages in sums, which will be shown according to proof.

37. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

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38. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, total hours worked, all hourly rates of pay during the pay period and all hours worked at each rate of pay, in violation of Labor Code § 226.

41. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime wages and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

42. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event

1 the employer discharges the employee, or the employee provides at least 72 hours of notice of
2 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
3 to quit, said employee's wages become due and payable not later than 72 hours upon said
4 employee's last date of employment.

5 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
7 at their separation from employment, including (but not limited to) unpaid overtime wages and
8 unpaid rest period premium wages.

9 46. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
10 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
11 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
12 to the requirements of Labor Code §§ 201-203.

13 47. Defendants' failure to pay all final wages was willful within the meaning of Labor
14 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
15 Time Class their earned wages upon separation from employment results in a continued payment
16 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
17 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
18 attorneys' fees and costs of suit.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(AGAINST ALL DEFENDANTS)**

22 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 49. Defendants have engaged, and continue to engage, in unfair and/or unlawful
24 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
25 Plaintiff and the Classes all overtime wages due, failing to authorize and permit rest periods or
26 pay rest period premium wages, failing to furnish accurate and complete itemized wage
27 statements, failing to reimburse business expenses, and failing to pay all earned wages at
28 separation of employment.

1 50. Defendants' utilization of these unfair and/or unlawful business practices has
2 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
3 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
4 Defendants' competitors who have been and/or are currently employing workers and attempting
5 to do so in honest compliance with applicable wage and hour laws.

6 51. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
7 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
8 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
9 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

10 52. The acts complained of herein occurred within the four years immediately
11 preceding the filing of this action.

12 53. Plaintiff was compelled to retain the services of counsel to file this court action to
13 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
14 of Defendants' current non-exempt employees, and to enforce important rights affecting the
15 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
16 which he is entitled to recover under Code of Civil Procedure § 1021.5.

17 **SEVENTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 55. Defendants have committed several Labor Code violations against Plaintiff and
22 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
23 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
24 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
26 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
27 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
28 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus

25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- c. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203; and
- f. Failing to pay sick pay at the proper rate of pay, in violation of Labor Code § 246.

56. On or about May 15, 2023, Plaintiff notified Defendant Eagle Systems International, Inc. doing business in California as Synergy Companies., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 55 (a)-(f) above. Now that sixty-five (65) days have passed from

1 Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his
2 administrative requirements for bringing a claim under the Private Attorneys General Act with
3 respect to these violations.

4 57. Plaintiff was compelled to retain the services of counsel to file this court action to
5 protect his interests and the interests of other aggrieved employees, and to assess and collect the
6 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
7 he is entitled to recover under California Labor Code § 2699(g).

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
10 this suit is brought against Defendants, as follows:

- 11 1. For an order certifying the proposed Classes;
- 12 2. For an order appointing Plaintiff as representative of the Classes;
- 13 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 14 4. Upon the First Cause of Action, for compensatory, consequential, general, and
15 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 16 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
17 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
- 18 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
19 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 20 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
21 226, *et seq.*;
- 22 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
23 Labor Code §§ 201-203;
- 24 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
25 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
26 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
27 *seq.*;

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1 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
2 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
3 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay
4 each employee and \$200.00 for each subsequent violation or willful or intentional violation
5 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
6 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
7 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
8 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
9 pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
10 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
11 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
12 period for those violations of the Labor Code for which no civil penalty is specifically provided,
13 pursuant to Labor Code § 2699(f);

14 11. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 California Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of
16 the California Constitution;

17 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

19 13. For such other and further relief the Court may deem just and proper.
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21 Date: July 20, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

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23 By:



Tuvia Korobkin
Attorney for Plaintiff

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Dated: July 20, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

Respectfully submitted,
ABRAMSON LABOR GROUP

Tuvia Korobkin
Attorney for Plaintiff