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Attorneys for Plaintiffs HECTOR GOMEZ and
SALVADOR TORRES, and others similarly situated

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

HECTOR GOMEZ and SALVADOR
TORRES, individuals, on behalf of
themselves and others similarly situated,

Plaintiff,

vs.

CALIFORNIA ENVIRONMENTAL
SYSTEMS, INC., a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: S-CV-0050786

CLASS ACTION

Assigned for All Purposes To:
Hon. Trisha J. Hirashima
Dept.: 42

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for all Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break and Recovery Period Liability under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: July 12, 2023
Trial Date: None set.

1 Plaintiffs HECTOR GOMEZ and SALVADOR TORRES (hereinafter “Plaintiffs”), on
2 behalf of themselves and all other similarly situated non-exempt, hourly non-exempt employees
3 employed by Defendants in California as construction workers and in similar and related positions
4 (collectively, “Employees”; individually, “Employee”) complain of Defendants, and each of them,
5 as follows:

6 INTRODUCTION

7 1. Plaintiffs bring this action on behalf of themselves and all other similarly situated
8 current and former Employees within the State of California who, at any time from four (4) years
9 prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees,
10 including as construction workers and installers and in similar and related positions in California
11 by Defendants CALIFORNIA ENVIRONMENTAL SYSTEMS, INC., a California corporation;
12 and DOES 1 through 50, inclusive (all defendants being collectively referred to as “Defendants”).
13 Plaintiffs allege that Defendants, and each of them, violated various provisions of the California
14 Labor Code, relevant orders of the Industrial Welfare Commission (“IWC”), and the California
15 Business & Professions Code, and seeks redress for these violations.

16 2. Plaintiffs and the other similarly situated Employees of Defendants worked on
17 assigned construction site locations and based out of Defendants’ facilities and offices in
18 California at Defendants’ behest without being paid all wages due and without being provided all
19 their required meal periods and rest breaks. Upon information and belief, Plaintiffs were employed
20 by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same
21 policies and practices; and (3) endured similar violations at the hands of Defendants as the other
22 Employee Class members who served in similar and related positions. Defendants required
23 Plaintiffs and the Employees in the Class to work off the clock and failed to record accurate time
24 worked by these Employees, failed to pay them at the appropriate rates for all hours worked and
25 willfully neglected to pay overtime, failed to pay all wages due and owing at termination or
26 resignation, and provided Plaintiffs and the Class members with inaccurate wage statements that
27 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
28 Plaintiffs and the Class with lawful meal and rest periods, as Employees were required to remain

1 under Defendants' control and were not provided with the opportunity to take full uninterrupted
2 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
3 paragraphs of the IWC Wage Orders.

4 3. Plaintiff Gomez has resided in Santa Clara county during the relevant period and
5 Plaintiffs and the other Class members resided in counties throughout central and northern
6 California and were often assigned to work sites remote from their residences. Accordingly,
7 Defendants would transport Employees or they would drive themselves to the various assigned
8 work locations from their homes for the start of a workweek, and would return back to their homes
9 at the end of the workweek. Defendants would pay for accommodations at local hotels or rented
10 apartments, and Employees would stay in those locations before and after work shifts during the
11 work weeks.

12 4. Defendant CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. explains it is "a
13 full service mechanical contractor providing plumbing, heating and air conditioning systems
14 installation and design/build services for the healthcare, institutional, commercial and industrial
15 sectors throughout the western United States." It describes its type of business with the California
16 Secretary of State as "Mechanical Engineering and Construction" and maintains principal
17 executive offices in Auburn, California and in Placer County. Plaintiffs and the Class members
18 were employed by Defendant CALIFORNIA ENVIRONMENTAL SYSTEMS, INC. during the
19 relevant period and it was listed as the employer on the wage statements provided to Plaintiffs.
20 Upon information and belief Plaintiffs' wage statements were uniform in appearance and content
21 to those of other members of the Class.

22 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
24 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
25 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
26 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
27 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Placer County, as
28 Defendant CALIFORNIA ENVIRONMENTAL SERVICES, INC.. is headquartered there.

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

7. Plaintiffs are informed and believe and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiffs and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiffs and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiffs, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiffs and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs also contend that Defendants failed to pay Plaintiffs and the Class members all wages due and owing, including by requiring off the clock work and through unlawful rounding and failing to pay overtime and double time and maintain records of all hours worked, failed to provide meal and

1 rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed or
2 reimburse necessary business expenses, all in violation of various provisions of the California
3 Labor Code and applicable paragraphs of the IWC Wage Orders.

4 9. Plaintiffs and the Class members were not paid all wages they were owed,
5 including for all work performed (resulting in “off the clock” work) and for all their overtime
6 hours worked. This has resulted in systematic and ongoing violations of the California Labor
7 Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ and have
8 employed other non-exempt Employees in construction and HVAC installation related positions
9 in Placer County and in other California locations.

10 10. Plaintiffs generally worked five to six day work weeks from Monday through
11 Friday and would also work some Saturdays if needed. Their typical shifts lasted many hours,
12 generally over eight and up to ten or twelve or more hours when all unpaid time is considered.
13 Plaintiffs and the Class members would drive from their homes to a hotel or apartment near a
14 remote work site on Sunday evenings to be ready for work the following morning. To be on time
15 for a scheduled start by about 6:30 a.m., Plaintiffs and the Class members were expected to arise
16 early from their accommodations by around 4:30 a.m. to prepare for the day and were then
17 expected to be at a second parking area nearer to the work site, where they were picked up by one
18 of Defendants’ van drivers. Workers were then required to ride in the company vehicle to their
19 assigned job sites, and were generally scheduled to begin their work day around 6:30 a.m. when
20 the van dropped them at the work site. Employees were then required to attend a morning safety
21 meeting where Defendants’ foremen also addressed the scope of work and assigned duties for the
22 day and such. After the morning stand-up meetings, Plaintiffs and the Class members were then
23 required to participate in stretching and warm up exercises and then to begin working at their
24 assigned locations.

25 11. Upon information and belief, Defendants maintained no realistic systems or
26 methodologies for accurately recording the actual hours that Plaintiffs and the Class members
27 worked. There was a cell-phone application based timekeeping system that Defendants expected
28 Plaintiffs and the Class members to download and utilize, at their own expense, named Clock

1 Shark. Plaintiffs and the Class members were instructed to clock in around the time they were
2 getting in the van for transport from the second parking area to the work site, which was usually
3 around 6:30 a.m. Time was not recorded for the time traveling from the hotel to the second
4 parking lot or the time waiting there for the van. Defendants expected Employees to similarly
5 clock out before or during their trip back to the second parking area for the end of their shifts, and
6 to generally work scheduled hours until approximately 3:00 p.m. for a total of approximately 8.5
7 scheduled hours. Plaintiffs and the Class members were expected to enter shift beginning and end
8 times during their trip to and from the day's work site in the van, and were in no way credited for
9 any hours outside these times. However, the time entries entered into the Time Shark application
10 were generally significantly greater than the hours scheduled, but Defendants' would disregard
11 any recorded times and pay generally only for the scheduled hours after an automatic deduction
12 of 30 minutes for a meal period. As a result, Plaintiffs and the Class members were paid for
13 neither the times recorded in Defendants' timekeeping systems nor the many hours while they
14 were under Defendants' control before and after their hours were allegedly being recorded.

15 12. Additionally, Defendants' did not maintain any similar timekeeping records of
16 actual times when employees started and ended their meal periods, as Defendants' uniformly
17 applied policy was not to record any meal period times in the Time Shark application or by other
18 means. Therefore, after allegedly recording real time entries for only shift start and end times,
19 Defendants through its managers would only change or otherwise alter the hours worked for pay
20 purposes to reflect what was scheduled for the day, including any overtime hours. In practice,
21 Defendants thus required systematic off the clock work and failed to maintain any actual
22 timekeeping records reflecting the actual start and end time of work shifts and the start and end
23 times for any meal periods for the Class members. Defendants simply presumed they were
24 working and paid them in accordance with scheduled rather than actual hours worked, and
25 Defendants certainly failed to pay for any of the several hours a day Plaintiffs and the Class
26 members were under Defendants' control.

27 13. Plaintiffs and the Class were also required to endure further systematic off the
28 clock work at Defendants' hands, including before and after the scheduled times for work shifts

1 and during any breaks. In practice, there was also additional off the clock work that flowed from
2 atypical housing and living arrangement for the Employees during the work week and during
3 their weekends. They were required to travel at their own expense to remote locations and pay for
4 all their food and other supplies and to travel to various job site parking areas and then travel on
5 vans to work locations and participate in start up meetings and stretching while Defendants failed
6 to pay them for the vast majority or all of this time. Defendants also required use of personal
7 cellular phones for responding to messages and for scheduling and work related communications
8 and for maintaining the timekeeping records, and managers and foreman communicated with
9 Employees at the hotels and apartments where they were sharing rooms about work related
10 matters and scheduling and the like after and before scheduled work hours. Defendants paid no
11 *per diem*, and Plaintiffs and the Class members were required to incur expenses for all their food
12 and traveling to accommodations and to work site staging areas. Rounding of time entries to
13 whole or half hour increments appears to be the norm from available wage statements, and these
14 rounded entries were also shaved and significantly shorted before this further rounding.

15 14. Defendants did not post work schedules for Plaintiffs and the Class members, and
16 foremen or other managers would communicate to Employees if they had to work longer on a
17 particular day and regarding the schedules for upcoming days and weeks. Defendants' uniformly
18 applied policies and practices thus resulted in Plaintiffs and the Class members incurring
19 substantial off the clock work before scheduled shift times, but also incurring substantial unpaid
20 hours, including overtime hours, worked off the clock after their scheduled shift end times.
21 Defendants therefore also maintained a uniformly applied policy of not paying Plaintiffs and the
22 Class Members at overtime or double time rates for any of their hours worked over eight in a shift
23 or forty in a week. Defendants did so without regard to the actual number of hours worked or the
24 requirements of the Labor Code and applicable IWC Wage Order(s). Defendants would pay
25 Plaintiffs for less hours than they worked, including overtime hours, due to the above described
26 rounding and other off the clock work. Upon information and belief, Defendants' same unlawful
27 policy of systematically failing to pay overtime and double times hours worked applied to all
28 Class members and resulted in an ongoing failure to pay all wages for all hours worked and to

1 pay them at the appropriate regular, overtime, and double time rates, including as required under
2 the Labor Code and relevant Wage Order(s). Plaintiffs' complained about all the uncompensated
3 time they were required to work, as did other Class members, but Defendants took no responsive
4 actions to remedy the violations. Instead, Defendants managers informed Plaintiffs that they
5 weren't being paid for all that time because they weren't working during it. Defendants thus
6 failed to pay for all "hours worked" by systematically failing to pay for any time when Plaintiffs
7 were under Defendants' control.

8 15. Upon information and belief, the other Class members also endured similar
9 systematic underpayment of regular, overtime, and double time wages as Plaintiffs given
10 Defendants' uniformly applied and unlawful policies and practices of requiring substantial off the
11 clock work, rounding timekeeping entries to Employees' detriment, automatically deducting for
12 unprovided or otherwise unlawful meal periods, systematically failing to pay overtime and double
13 time for hours worked in a shift, and failing to maintain accurate records of shift and meal start
14 and end times. Whether managers accurately recorded the reported times and actual hours worked
15 in such instances for Plaintiffs and the Class members is unknown to them, as upon information
16 and belief Defendants also did not provide Plaintiffs and the Class members with the opportunity
17 to meaningfully review their timekeeping entries for all shifts worked during a work week or a bi-
18 weekly or weekly pay period before submitting them to payroll for processing.

19 16. Defendants thus used their own failure to comply with their record keeping
20 requirements as alleged justification for not paying Employees for all hours worked. Plaintiffs
21 and the Class members were only sporadically compensated in these later pay periods for work
22 performed in earlier ones, and on the occasions when they were, Defendants systematically
23 violated Labor Code §§ 204 and 226 by failing to timely and accurately report and pay for all
24 hours worked. Defendants' managers also would not record actual beginning and ending times
25 when meal periods were taken, if at all, by Plaintiffs and the Class members, and would instead
26 automatically deduct time for complete meal periods from hours worked without regard to
27 whether a compliant meal period was actually provided. Defendants similarly denied Plaintiffs
28 and the Class members the opportunity to review any alleged meal period start and completion

1 times, to the extent Defendants actually and accurately recorded any of these times.

2 17. Plaintiffs were not paid for all their hours worked and were not provided the
3 opportunity to see that any changes that had been made to timekeeping records and payroll data
4 before pay checks were issued, despite being repeatedly underpaid for all their hours worked.
5 Defendants' conduct therefore also violates the requirement to timely pay all wages, including
6 under Labor Code § 204. Upon information and belief, the same occurred in connection with the
7 other Class members.

8 18. Plaintiffs were therefore not paid for all their hours worked at the required
9 minimum, overtime and double time wage rates due to Defendants' policy of unlawful rounding
10 and practice of requiring them to work off the clock and without pay, and failed to pay at the
11 required overtime and double time rates for all hours over ten or twelve in a shift. With work
12 shifts often being scheduled for or otherwise lasting for ten to twelve hours or more, this unpaid
13 off the clock work resulted in Plaintiffs and the Class members working past the point in time on
14 a work shift when overtime would begin to accrue, which required that they be paid at the correct
15 overtime rate of 1.5 times their regular rate and double time rate of twice the regular rate.
16 Defendants' management would shave hours worked off of Plaintiffs' daily and weekly totals, or
17 otherwise round them down or fail to record them. To the extent Defendants paid Class members
18 any shift differentials or bonuses or other forms of remuneration, Defendants failed to include
19 them in the regular rate used to calculate and pay overtime and double time hours when they were
20 paid.

21 19. Defendants thus systematically underpaid Plaintiffs and the Class members by
22 failing to pay them at the required overtime and double time rates for all hours worked as
23 required under the Labor Code and Wage Orders. Upon information and belief, the Class
24 members were bound by similar scheduling and work policies which Defendants required them to
25 follow, and endured similar violations for unpaid wages at Defendants' hands as Plaintiffs.
26 Defendants have either failed to maintain timekeeping records for Plaintiffs that would permit
27 Plaintiffs to discover the nature and extent of the off the clock work Defendants' required and the
28 actual hours Plaintiffs worked, or have otherwise declined to produce them to Plaintiffs in

1 response to a timely and lawful request. By failing to pay for all hours worked, and by deducting
2 time for meal periods that were not lawfully provided, and by recording incorrect timekeeping
3 entries for meal period times and shift hours worked, Defendants have committed knowing and
4 intentional ongoing violations of the record keeping requirements under the Labor Code,
5 including section 1174.

6 20. The failure to pay for all hours worked and underpayment of wages to Plaintiffs
7 and the Class members is and has been a direct consequence of Defendants' unlawful
8 compensation policies and practices, which applied uniformly to the Class members working
9 based out of Defendants' facilities and at Defendants' work sites in California. As a result of the
10 above described unlawful requirements to work off the clock, the failure to accurately record all
11 hours worked and pay wages at the correct rates, and the other wage violations they endured at
12 Defendants' hands, and Defendants' work scheduling and workweek policies, Plaintiffs and the
13 Class members were not properly paid all wages earned and all wages owed to them by
14 Defendants, including when working qualifying overtime and double time hours in any given
15 week. As a result of Defendants' unlawful policies and practices, Plaintiffs and Class members
16 incurred overtime hours worked for which they were not adequately and completely
17 compensated, in addition to any hours they were required to work off the clock at regular rates.

18 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
19 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
20 hours worked, and failing to pay minimum wages for all time worked, as required by California
21 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
22 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
23 at premium overtime and double time rates for all qualifying hours in a workweek, in violation of
24 Labor Code § 510 and applicable Wage Order(s). In the event Defendants required Plaintiffs and
25 the Class members to work on seven consecutive workdays, Defendants also failed to provide one
26 day of rest out of seven consecutive work days, resulting in violations of Labor Code §§ 551 and
27 552 and entitling Plaintiffs and the Class members to damages and civil penalties under Labor
28 Code § 558.

22. Defendants also failed to provide Plaintiffs and the Class members with their required first and second meal periods, and their first, second, and third required rest breaks. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiffs and the Class members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to authorize and permit Plaintiffs and the Class members to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the Wage Orders

23. Defendants failed to provide lawful meal periods to Plaintiffs and the Class members, and willfully failed to schedule them despite automatically deducting 30 minutes from any hours worked for a work shift. In practice, Plaintiffs and the Class members were unable to take lawful meal periods given the production requirements and work demands Defendants' managers and supervisors placed upon them, it became increasingly difficult to ever take a full, thirty-minute, uninterrupted and timely meal period during their work shifts. Also, on the occasions when Defendants' attempted to provide meal periods they often did so well after five hours into the work shift. For example, if a shift started at 6:00 a.m., the meal period would be provided at noon, and given the substantial off the clock work before work shifts, any meal periods provided at a point five hours into a work shift were similarly untimely. Similar issues arose with rest periods, and despite requiring Plaintiffs and the Class members to consistently work shifts of over ten hours, Defendants failed to provide them with at least three timely and duty-free net ten minute rest periods per work shift. Defendants generally made no efforts to schedule and authorize and permit rest breaks, and Plaintiffs and the class members were consistently required to work through rest breaks they attempted to take. As with the above wage violations, Defendants should not be permitted to justify their failure to provide meal periods by their own failure to keep accurate records of any meal periods provided.

24. Therefore, when Plaintiffs and the Class members were actually permitted to take a meal period, it was generally well after five hours into their shifts, or was interrupted by work demands or shortened. In fact, on many occasions, Plaintiffs could not stop to take a meal break and would have to combine a meal period with a brief rest break. Plaintiffs and the Class

1 members were not permitted to leave their work sites for any meal periods, and were therefore
2 further subjected to Defendants' control during any break time they did take. As the majority of
3 Plaintiffs' work shifts were over ten hours in duration when all hours worked are considered,
4 Defendants also failed to provide Plaintiffs and the Class members with a second duty-free meal
5 period of at least 30 minutes in duration.

6 25. Defendants thus followed uniformly applied policies of not providing all required
7 meal periods and rest breaks to their Employees in accordance with the Labor Code and IWC
8 Wage Orders. When Defendants did provide breaks, they were frequently provided well after five
9 hours into a work shift, and often for less than 30 minutes, and Plaintiffs and the Class members
10 were required to remain under Defendants' control and respond to work demands during breaks.
11 Plaintiffs were also required to endure shifts of ten hours or more without receiving a second
12 meal period or all three of their required rest breaks, as were the other Class members.
13 Additionally, as addressed above, Defendants followed a practice of requiring off the clock work,
14 in a manner that would impact when Employees were to receive meal periods and rest breaks,
15 thus leading to further violations.

16 26. As a result, Defendants' failure to provide Plaintiffs and the Class members with all
17 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
18 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
19 either failed to maintain required records of when meal periods were actually provided or failed to
20 produce them in response to Plaintiffs' timely and lawful requests, or else maintained inaccurate
21 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
22 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
23 Defendants failed to provide or deficiently provided.

24 27. Therefore, for at least four years prior to the filing of this action and through to the
25 present, Plaintiffs and the Class members were unable to take off-duty breaks or were otherwise
26 not provided with the opportunity to take required meal breaks due to Defendants' policies and
27 practices. On the occasions when Plaintiffs and the Class members were provided with a meal
28 period, it was often provided after five hours into a work shift and was therefore untimely or was

1 interrupted, or was impermissibly shortened, and Employees were not provided with one hour's
2 wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they
3 failed to do so for all violations or failed to pay them at the regular rate of compensation by failing
4 to include all forms of remuneration. Meal period violations thus occurred in one or more of the
5 following manners:

- 6 (a) Class members were not provided full thirty-minute duty free meal periods
7 for work days in excess of five hours and were not compensated one hour's
8 wages in lieu thereof, all in violation of, among others, Labor Code §§
9 226.7, 512, and the applicable Industrial Welfare Commission Wage
10 Order(s);
- 11 (b) Class members were not provided second full thirty-minute duty free meal
12 periods for work days in excess of ten hours;
- 13 (c) Class members were required to work through at least part of their daily
14 meal period(s);
- 15 (d) Meal periods were provided after five hours of continuous work during a
16 shift; and
- 17 (e) Class members were restricted in their ability to take a full thirty-minute
18 meal period or were otherwise required to remain under Defendants'
19 control during meal periods.

20 28. Defendants also failed to authorize and permit Plaintiffs and the Class members to
21 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
22 thereof. Defendants gave a similar cursory level of attention to ensuring Plaintiffs and the Class
23 members were authorized and permitted to take their required ten minute rest breaks during
24 extended work shifts. Defendants' managers would impose work demands and expectations on
25 Plaintiffs and the Class members that they must continue working or were required to prioritize
26 completing work tasks over taking breaks. As to any rest breaks that Plaintiffs and the Class
27 members were able to attempt to take, they were often untimely or were interrupted or shortened
28 by work demands, or Plaintiffs were compelled to attempt to combine their meal period with a

1 rest break. On shifts of eight hours, Defendants would only allow one rest period, if at all, and
2 would not schedule second breaks. On shifts of over ten hours when another break was
3 contemplated, Defendants then systematically failed to provide Plaintiffs and the Class members
4 with a third rest break, as Defendants did not even contemplate providing third rest breaks on
5 such occasions or failed to provide a second break.

6 29. Therefore, the job requirements and duties required of Plaintiffs and the Class
7 members, and the demands from management and customers, manifested a failure to authorize
8 and permit Class members to take all their required rest breaks. Plaintiffs and the other similarly
9 situated Class members were either not authorized permitted the opportunity to take a rest break,
10 or were required to remain under Defendants' control and respond to instructions from
11 management and job and customer demands. Defendants also failed to authorize and permit
12 employees to leave the premises during rest breaks, or else prevented them from doing so, thus
13 further evidencing Defendants' policy and practice of requiring Plaintiffs and the Class members
14 to remain under their control during required off-duty rest breaks.

15 30. Defendants' policies and practices thus systematically deny and denied Plaintiffs
16 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
17 periods. The California Supreme Court has instructed that the rest period requirement obligates
18 employers to authorize and permit employees to take-off-duty rest periods. That is, during rest
19 periods employers must relieve employees of all duties and relinquish control over how
20 employees spend their time. Plaintiffs and the Class members were and are under Defendants'
21 control when they are working through rest breaks, and Defendants failed to schedule or account
22 for required first, second, and third rest breaks during the shifts Plaintiffs and the Class members
23 generally worked.

24 31. Defendants also failed to provide rest and recovery periods as required under the
25 Labor Code. Plaintiffs and Class Members work outdoors, performing intense manual labor at
26 Defendants' behest. This work is performed over the course of many hours in temperatures
27 regularly exceeding 80 degrees Fahrenheit, and often up to 100 degrees Fahrenheit. Despite these
28 work conditions, Defendants have failed to implement an adequate policy or practice of providing

1 recovery periods to their non-exempt employees. Defendants have similarly failed to make effort
2 to comply with heat illness prevention regulations by providing places of shade for recovery
3 periods or by supplying sufficient amounts of drinking water. As with meal and rest breaks,
4 Defendants did not provide Plaintiff and Class members with any written documents informing
5 them of their rights to take recovery periods, and thus they did not take them.

6 32. Plaintiffs and the Defendants' Employees in the Class were therefore not
7 authorized and permitted to take lawful rest periods, were not provided with recovery periods,
8 were systematically required by Defendants to work through or during breaks, and were not
9 provided with one hour's wages in lieu thereof. They were required to remain on-duty during
10 breaks or portions of their breaks, thus making them either untimely or shortened and on-duty,
11 and they were also prevented from leaving the premises during rest breaks under Defendants'
12 policies and practices. Rest period violations therefore arose in one or more of the following
13 manners:

- 14 (a) Class members were required to work without being provided a minimum
15 ten minute rest period for every four hours or major fraction thereof
16 worked and were not compensated one hour of pay at their regular rate of
17 compensation for each workday that a rest period was not provided;
- 18 (b) Class members were not authorized and permitted to take timely rest
19 periods for every four hours worked, or major fraction thereof; and
- 20 (c) Class members were required to remain on-duty and under Defendants'
21 control during rest periods or otherwise had their rest periods interrupted
22 by work demands.

23 33. From at least four years prior to the filing of this lawsuit and continuing to the
24 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
25 deducting the Employees' earned wages, including by the above described off the clock before
26 and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods
27 Defendants failed to provide. Upon information and belief, Defendants took the same unlawful
28 deduction from the other Class members as were reflected on Plaintiffs' wage statements. In such

1 instances, Plaintiffs and the Class members had their wages unlawfully deducted when
2 Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact
3 worked. By not compensating Employees for all hours worked and failure to pay for hours spent
4 under Defendants' control, and by taking specific unlawful and unauthorized deductions from
5 wages paid, Defendants unlawfully deducted wages earned by and owed to Plaintiffs and the Class
6 members, in violation of Labor Code § 221.

7 34. As a result of the above described illegal policies and practices, Defendants
8 engaged in and enforced the following additional unlawful practices and policies against
9 Plaintiffs and the Class members they seeks to represent:

- 10 (a) failing to pay all wages owed to Class members who either were
11 discharged, laid off, or resigned in accordance with the requirements of
12 Labor Code §§ 201, 202, 203;
- 13 (b) failing to pay all wages owed to the Class members twice monthly in
14 accordance with the requirements of Labor Code § 204;
- 15 (c) failing to pay Class members all wages owed, including all meal and rest
16 period premium wages;
- 17 (d) failing to maintain accurate records of Class members' earned wages and
18 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
19 of the applicable IWC Wage Orders; and
- 20 (e) failing to produce timekeeping records in response to Plaintiffs' timely and
21 lawful request to receive them under these authorities.

22 35. Defendants have also consistently failed to provide Employees with timely,
23 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
24 including by the above-described requirement of off the clock work, failure to pay all overtime
25 and double time, and failure to pay premium wages for unprovided or otherwise unlawful meal
26 and rest breaks. Defendants have also made it difficult to account with precision for the unlawfully
27 withheld wages and meal and rest period compensation owed to Plaintiffs and the Class, during
28 the liability period, because they did not implement and preserve a record-keeping method as

1 required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of
2 the applicable California Wage Orders. Upon information and belief, time clock punches were not
3 maintained or were not accurately maintained for work shifts and meal periods, which were
4 automatically presumed by Defendants to have been lawfully provided when they were not.
5 Defendants also failed to accurately record and pay for all regular and overtime and double time
6 hours worked by Plaintiffs and the Class members.

7 36. Defendants also provided Plaintiffs and the Class members with wage statements
8 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
9 Plaintiffs and the Employees in the Class were unable to discern from their wage statements alone
10 the actual hours they worked in total during a pay period, or the correct rates they should have
11 been paid at.

12 37. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
13 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiffs
14 and the Class members, along with the appropriate applicable rates, among others requirements.
15 Plaintiffs and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
16 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
17 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
18 when the employee begins and ends each work period, meal periods, wages earned pursuant to
19 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
20 from payment of wages and accurately reporting total hours worked by the Class members.

21 38. Defendants also required Plaintiffs and the Class members to work hours off the
22 clock for which they were not compensated, including during interrupted or otherwise on-duty
23 meal and rest periods. Defendants also failed to pay all overtime and double time premium wages
24 owed for work conducted on a work shift and a workday, as addressed above. Therefore, when
25 they received wage statements and pay checks, they did not compensate all hours worked on a
26 timely basis, resulting in Defendants' systematic failure to pay all wages owed to Plaintiffs and the
27 Class members twice monthly in accordance with the requirements of Labor Code § 204.

28 39. Also, from at least three years prior to filing this lawsuit and continuing to the

1 present, Defendants have followed a uniform and consistent policy of failing to pay all wages
2 owed to Plaintiffs and other similarly situated Employees at the time of their termination or within
3 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.
4 Defendants' failure to pay wages for all hours worked and failure to pay premiums for overtime
5 and double time and unlawful meal and rest periods further evidenced their failure to pay all
6 wages owed to Plaintiffs and the Class members at the time they were terminated or otherwise
7 separated from employment.

8 40. Defendants also violated California Labor Code § 246 by not providing all required
9 paid sick days to Plaintiffs and the Employees in the Class. Labor Code § 246 provides that an
10 Employee who "works in California for the same employer for 30 or more days within a year from
11 the commencement of employment is entitled to paid sick days as specified in this section."
12 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
13 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
14 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
15 the Class members during the relevant time period, including by failing to provide two work
16 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
17 248.2 and including damages and penalties as these sections are enforced through Labor Code §
18 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid
19 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
20 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
21 (\$4,000), shall be included in the administrative penalty." Plaintiffs accordingly seek this relief
22 available for Defendants' failure to provide Employees with all their required and earned sick days
23 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
24 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
25 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and
26 costs pursuant to Labor Code § 2699(g)(1).

27 41. Plaintiffs further allege that Defendants have implemented practices that conceal
28 the ability of non-exempt employees to discover their unfair and unlawful employment practices.

1 For example, upon information and belief, Defendants did not provide employees with notices at
2 the time of hiring, as required under Cal. Labor Code § 2810.5, which inform employees of the
3 basic employment information, such as who their employer is, their hourly rates of pay, etc.
4 Defendants also did not provide documents to which non-exempt employees are legally entitled
5 under Labor Code §§226 and 1198.5, within the timeframes proscribed by these statutes and
6 regulations.

7 42. Additionally, from at least four years prior to the filing of this lawsuit and
8 continuing to the present, Defendants have regularly required Plaintiffs and the Class members to
9 incur necessary business expenses in the course of performing their required job duties without
10 reimbursement. For example, Defendants' managers and supervisors contacted Plaintiffs on their
11 personal cellular phone on a daily basis to request information and to address scheduling and the
12 hours they worked, and such calls came when they were both on and off duty. While on duty,
13 Plaintiffs were required to use their cell phones for work and job duty related purposes, such as
14 reviewing blueprints and plans and the like. Plaintiffs and other Class members were also required
15 to use their cellular phones for alleged timekeeping and pay purposes.

16 43. Plaintiffs and the other Class members were also required to purchase and use their
17 own tools in performing their daily job duties without reimbursement, as Defendants provided no
18 tools or equipment to utilize at the work sites. Plaintiffs and upon information and belief other
19 Class members were also required to drive their own vehicles during work shifts and to and from
20 work site locations. Defendants did not reimburse Plaintiffs and the Class members for their
21 mileage or other expenses incurred in transporting themselves to assigned work locations.
22 Defendants failed to reimburse for any such work-related expenses Plaintiffs and the Class
23 members were required to incur, in violation of Labor Code § 2802.

24 44. In light of the foregoing, Plaintiffs and the Employees in the Class bring this action
25 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
26 511, 512, 551, 552, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2698 *et seq.*, and
27 the applicable Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*

28 45. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,

1 Plaintiffs and the Class members seek injunctive relief, restitution, and disgorgement of all
2 benefits Defendants have enjoyed from their violations of Labor Code and the other unfair,
3 unlawful, or fraudulent practices alleged in this Complaint.

4 **CLASS ALLEGATIONS**

5 46. Plaintiffs bring this class action on behalf of themselves and all others similarly
6 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class (or “the
7 Class” or “Class members”) defined as follows: “all current and former nonexempt employees
8 who were employed by Defendants in California as installers and in similar and related
9 construction positions during the Class Period of four years prior to the filing of this Complaint
10 through a date as approved by the Court.

11 47. Further, Plaintiffs seek to represent the Subclasses composed of and defined as
12 follows:

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

15 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
16 compensated for all hours worked for Defendants at the required rates of pay, including for all
17 hours worked at the correct overtime and double time rates.

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

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

25 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
26 applicable limitations period, were not provided with accurate itemized wage statements.

27 f. Subclass 6 . Unauthorized Deductions from Wages Subclass. All Class members
28 who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay,

1 including by requiring off the clock work.

2 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
3 members who were subject to Defendants' policy and practice of not timely paying all wages
4 earned when they were due and payable at least twice monthly.

5 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
6 applicable limitations period, either voluntarily or involuntarily separated from their employment
7 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
8 termination.

9 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
10 necessary and reasonable expenses in connection with performing their job duties for Defendants
11 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

12 j. Subclass 10. Rounding Subclass. All Class Members who were subject to
13 Defendants' policy and practice of rounding or otherwise not paying for all hours they worked.

14 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
15 result of Defendants' business acts and practices, to the extent such acts and practices are found to
16 be unlawful, deceptive, and/or unfair.

17 48. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or
18 modify the class description with greater particularity or to provide further division into subclasses
19 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
20 against Defendants, the Class Period should be adjusted accordingly.

21 49. Defendants, as a matter of company policy, practice and procedure, and in violation
22 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
23 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
24 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
25 worked by Plaintiffs and the other members of the Class, even though Defendants enjoyed the
26 benefit of this work, required Employees to perform this work and permitted or suffered to permit
27 this work. Defendants have uniformly denied these Class members wages to which these
28 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in

1 order to unfairly cheat the competition and unlawfully profit.

2 50. This action has been brought and may properly be maintained as a class action
3 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
4 of interest in this litigation and the proposed Class is easily ascertainable from the employment
5 records for Plaintiffs and the Class members that Defendants are required to maintain under
6 California law.

7 **A. Numerosity**

8 51. The potential members of the Class as defined are so numerous that joinder of all
9 the Class members is impracticable. While the precise number of Class member has not been
10 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the
11 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
12 definition within the State of California. Plaintiffs allege that Defendants' employment records
13 will provide information as to the number and location of all Class members.

14 **B. Commonality**

15 52. There are questions of law and fact common to the Class that predominate over any
16 questions affecting only individual Class members. The common questions are numerous and
17 substantial and flow from Defendants' uniform policies and/or practices of violating the California
18 Labor Code addressed above. As such, these common questions predominate over individual
19 questions concerning each individual Class Member's showing as to his or her eligibility for
20 recovery or as to the amount of damages. These common questions of law and fact include:

- 21 a. Whether Defendants failed to pay Employees minimum wages;
- 22 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 23 c. Whether Defendants failed to pay Employees overtime as required under Labor
24 Code § 510 and Wage Orders;
- 25 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
26 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
27 premium pay in lieu thereof;
- 28 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage

Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;

- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

53. The claims of the named Plaintiffs are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as

1 well as regulations, that have the force and effect of law, as alleged herein. Plaintiffs' claims for
2 the off the clock work and meal and rest violations they were required to endure are typical of
3 those of the other Class members.

4 **D. Adequacy of Representation**

5 54. Plaintiffs will fairly and adequately represent and protect the interest of the
6 Employee Class members. Counsel who represents Plaintiffs and the Employees in the Class are
7 experienced and competent in litigating employment class actions.

8 **E. Superiority of Class Action**

9 55. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
11 questions of law and fact common to all Employees predominate over any questions affecting only
12 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
13 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

14 56. As to the issues raised in this case, a class action is superior to all other methods for
15 the fair and efficient adjudication of this controversy, as joinder of all Class members is
16 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
17 members. Further, as the economic or other loss suffered by vast numbers of Class members may
18 be relatively small, the expense and burden of individual actions makes it difficult for the Class
19 members to individually redress the wrongs they have suffered. Moreover, in the event
20 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
21 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
22 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
23 to vindicate their rights for violations they endured which they would otherwise be foreclosed
24 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

25 57. Class action treatment will allow those persons similarly situated to litigate their
26 claims in the manner that is most efficient and economical for the parties and the judicial system.
27 Plaintiffs are unaware of any difficulties in managing this case that should preclude class
28 treatment. Plaintiffs contemplate the eventual issuance of notice to the proposed Class members

1 that would set forth the subject and nature of the instant action. The Defendants' own business
2 records can be utilized for assistance in the preparation and issuance of the contemplated notices.
3 To the extent that any further notice is required, additional media and/or mailings can be used.

4 58. Defendants, as prospective and actual employers of the Employees in the Class,
5 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
6 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
7 Employees as well as the effect of any alleged arbitration agreements that may have been forced
8 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
9 and policies, most notably intentionally refusing to pay for all hours actually worked which should
10 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
11 agreements and policies and practices on the Employees and Class as a whole.

12 59. Plaintiffs and the Employees in the Class did not discover the fact that they were
13 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
14 any discussion about Plaintiffs' and the Class's waiver of their Constitutional rights of trial by
15 jury, to collectively organize and oppose unlawful pay practices under California law as well as
16 obtain injunctive relief preventing such practices from continuing. As a result, the applicable
17 statutes of limitation tolled until such Plaintiffs and the Class members discovered their claims.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(Against All Defendants)**

21 60. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

23 61. Defendants failed to pay Employees minimum wages they were owed, including
24 by their consistent policy of failing to pay Employees for all hours worked. Employees would
25 work hours and not receive wages, including as alleged above in connection with unlawful
26 rounding and off the clock work, including all the time required to remain on duty and under
27 Defendants' control and during breaks and due to the work demands placed upon them by
28 Defendants' management. Defendants also imposed difficult to attain job and shift scheduling

1 requirements on Plaintiffs and the Class members at work sites remotely located from their
2 homes, which resulted in off the clock work and underpayment of all wages owed to Employees
3 over a period of time, while benefiting Defendants. During the relevant time period, Defendants
4 thus regularly failed to pay minimum wages to Plaintiffs and the Class members, including by
5 requiring systematic off the clock work and by unlawful rounding. Defendants' uniform pattern
6 of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
7 whole, as a result of implementing a uniform policy and practice that denied accurate
8 compensation to Plaintiffs and the other members of the Class as to minimum wage pay.

9 62. In California, employees must be paid at least the then applicable state minimum
10 wage for all hours worked, including under Labor Code § 1197, and paragraphs 2(K), 2(S), and
11 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage
12 Orders defines "Hours Worked" as "the time during which an employee is subject to the control
13 of an employer, and includes all the time the employee is suffered or permitted to work, whether
14 or not required to do so." Additionally, pursuant to California Labor Code § 204, other applicable
15 laws and regulations, and public policy, an employer must timely pay its employees for all hours
16 worked. Defendants failed to do so. To the extent Plaintiffs and the Class members were
17 employed by Defendants in their capacity as a temporary services employer, Defendants failed to
18 timely pay all wages owed and provide accurate wage statements to Plaintiffs and the Class
19 members on a weekly basis, as required under Labor Code § 201.3, and failed to pay them all
20 wages owed at the end of their seasonal or temporary employment, as required under Labor Code
21 § 203.

22 63. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
23 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
24 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

25 64. The applicable minimum wage rate fixed by the commission for work during the
26 relevant period is found in the Wage Orders.

27 65. The minimum wage provisions of California Labor Code are enforceable by private
28 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to

1 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
2 overtime compensation applicable to the employee is entitled to recover in a civil action the
3 unpaid balance of the full amount of this minimum wage or overtime compensation, including
4 interest thereon, reasonable attorney's fees and costs of suit."

5 66. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
6 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
7 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
8 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
9 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
10 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiffs and the
11 Class members is and has been a direct consequence of Defendants' unlawful compensation
12 policies and practices, which applied uniformly to the Class members working for Defendants in
13 California.

14 67. In committing the above described violations of the California Labor Code,
15 Defendants inaccurately recorded, or required Plaintiffs and the Class members to input or accept
16 times that did not reflect their actual hours worked, including by requiring off the clock work and
17 rounding, as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment
18 of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
19 Welfare Commission requirements and other applicable laws and regulations. As a result of these
20 violations, Defendants also failed to timely pay all wages earned in accordance with California
21 Labor Code § 1194.

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

26 69. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
27 1197.1, Plaintiffs and Class members are entitled to recover a penalty of \$100.00 for the initial
28 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to

1 pay each employee minimum wages.

2 70. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class members are
3 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
4 interest thereon.

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

8 72. Wherefore, Plaintiffs and the Employee Class members are entitled to recover the
9 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
10 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
11 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other members of
12 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
13 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
14 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
15 extent minimum wage compensation is determined to be owed to the Class members who have
16 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
17 and therefore these individuals are also be entitled to waiting time penalties under California
18 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
19 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
20 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
21 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
22 willful, intentional, and not in good faith. Further, Plaintiffs and other Class members are entitled
23 to seek and recover statutory costs.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

26 **(Against All Defendants)**

27 73. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 74. California Labor Code § 1194 provides that “any employee receiving less than the
2 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
3 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
4 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
5 may be maintained directly against the employer in an employee’s name without first filing a
6 claim with the Division of Labor Standards and Enforcement.

7 75. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
8 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A)-(C) and 4(A)-4(B) of the relevant orders of
9 the Industrial Welfare Commission), by failing to pay Employees for all hours worked, including:
10 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
11 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
12 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
13 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
14 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
15 wages for all hours worked, including by requiring off the clock work as addressed above and by
16 under-reporting actual hours worked, often with the specific intention of avoiding having to pay
17 overtime or double time. With work shifts generally being scheduled for eight hours or more, this
18 unpaid off the clock work resulted in Plaintiffs and the Class members working past eight and
19 often over ten hours on a shift, which required that they be paid at the correct overtime rate of 1.5
20 times their regular rate and the correct double time rate of twice the regular rate.

21 76. Defendants thus had a consistent policy of not paying Employees wages for all
22 hours worked, including hours at their required regular, overtime, and double-time rates, and as
23 required under applicable living wage ordinances. Defendants required Plaintiffs and the Class
24 members to work off the clock to avoid paying all their earned and owed straight time and
25 overtime wages and other benefits, in violation of the California Labor Code, the California Code
26 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
27 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiffs
28 and other similarly situated non-exempt employees to work through meal periods when they were

1 required to be clocked out or to otherwise work off the clock to complete their daily job duties or
2 and participate in company required activities or complete work tasks and remain under
3 Defendants' control. Therefore, Employees were not properly compensated, nor were they paid
4 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
5 given week, or at double time rate for hours over twelve in a shift, or as otherwise required and
6 addressed above. Based on information and belief, Defendants did not make available to
7 Employees a reasonable protocol for correcting time records when Employees worked overtime or
8 double time hours or to fix incorrect time entries or those that Defendants unlawfully under-
9 recorded to the Employee's detriment. Defendants also under-paid Plaintiffs and the putative Class
10 members all wages by systematically miscalculating and underpaying overtime wages they earned.

11 77. Defendants' failure to pay Plaintiffs and the Class members the unpaid balance of
12 regular wages owed and overtime compensation for all hours worked, as required by California
13 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
14 IWC Wage Order, and is therefore unlawful.

15 78. Additionally, Labor Code § 558(a) provides "any employer or other person acting
16 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
18 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
19 pay period for which the employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
23 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
24 this section are in addition to any other civil or criminal penalty provided by law." Defendants
25 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
26 Wage Orders. Accordingly, Plaintiffs and the Class members seek the remedies set forth in Labor
27 Code § 558.

28 79. Defendants' failure to pay compensation in a timely fashion also constituted a

1 violation of California Labor Code § 204, which requires that all wages shall be paid
2 semimonthly. From four years prior to the filing of this lawsuit to the present, in direct violation
3 of that provision of the California Labor Code, Defendants have failed to pay all wages and
4 overtime compensation earned by Employees. Each such failure to make a timely payment of
5 compensation to Employees constitutes a separate violation of California Labor Code § 204.

6 80. Employees have been damaged by these violations of California Labor Code §§
7 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
8 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
9 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
10 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
11 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
12 any order or ruling of the commission.”

13 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
14 200, 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the Wage Orders, and
15 including paragraphs 2(K), 2(S), 3(A), 3(B), 3(C), 4, and 18 or 20, Defendants are liable to
16 Employees for the full amount of all their unpaid wages and overtime compensation for all their
17 hours worked, with interest, plus their reasonable attorneys’ fees and costs, as well as the
18 assessment of any statutory penalties against Defendants, and each of them, and any additional
19 sums as provided by the Labor Code and/or other statutes.

20 **THIRD CAUSE OF ACTION**

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

22 **(Against All Defendants)**

23 82. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
24 full herein.

25 83. Employees regularly worked shifts greater than five hours and in most instances,
26 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
27 Wage Order, an employer may not employ someone for a shift of more than five hours without
28 providing him or her with a meal period of not less than thirty minutes or for a shift of more than

1 ten hours without providing him or her with a second meal period of not less than thirty (30)
2 minutes.

3 84. Defendants failed to provide Employees with meal periods as required under the
4 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
5 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
6 provided them after Employees worked beyond the fifth hour of their shifts or Employees
7 otherwise had them shortened and interrupted by work demands and requirements to remain under
8 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
9 occasions when Employees worked more than ten hours in a given shift, they often did so without
10 receiving a second uninterrupted thirty minute meal period as required by law.

11 85. Defendants thus failed to provide Plaintiffs and the Class members with meal
12 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
13 including by not providing them with the opportunity to take meal breaks, by providing them late
14 or for less than thirty minutes, or by requiring them to perform work during breaks or otherwise
15 remain under Defendants' control during them and refusing to permit them to leave Defendants'
16 premises and work sites during breaks.

17 86. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
19 20 or 18 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide
20 an employee a meal period in accordance with this section, the employer shall pay the employee
21 one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
22 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
23 period not provided or inadequately provided, as required under Labor Code § 226.7 and
24 paragraphs 11 and 20 or 18 of the applicable IWC Wage Order.

25 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 or 18 of the
26 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
27 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
28 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory

penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

89. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) work hours.

90. Employees consistently worked consecutive four (4) hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided not at all or untimely as a result of the above described off the clock work. Plaintiffs and the Class members were also not permitted to leave work premises for rest breaks.

91. Labor Code §§ 226.7 and paragraphs 12 and 20 or 18 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

92. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiffs and the Class members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

93. Defendants failed to authorize and permit Plaintiffs and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees

1 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
2 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
3 12 and 20 or 18 of the applicable IWC Wage Orders.

4 94. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 or 18 of the
5 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
6 hour of wages at their effective hourly rates of pay for each day worked without the required rest
7 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

9 **FIFTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

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

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

21 97. Defendants failed to provide Plaintiffs and the similarly situated Employee Class
22 members with accurate itemized wage statements in writing, as required by the Labor Code and
23 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
24 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
25 including by failing to pay for all hours worked, failure to pay for all overtime hours and double
26 time hours worked and for providing deficient meal periods and rest breaks, all of which
27 Defendants knew or reasonably should have known were owed to the Employees, as alleged
28 above.

1 98. Defendants also provided Plaintiffs and the Class members with wage statements
2 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
3 Due to Defendants' failure to record and compensate for all hours worked or failure to do so
4 accurately, Plaintiffs and the Employees in the Class were unable to discern from their wage
5 statements along the actual hours they worked in total during a pay period.

6 99. Throughout the liability period, Defendants intentionally failed to furnish to
7 Plaintiffs and the Class members, upon each payment of wages, itemized statements accurately
8 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
9 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
10 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
11 the employee and only the last four digits of his or her social security number or an employee
12 identification number other than a social security number, (8) the name and address of the legal
13 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
15 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
16 requirements. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
17 members with such timely and accurate wage and hour statements.

18 100. Plaintiffs and the Class members suffered injury as a result of Defendants'
19 knowing and intentional failure to provide them with the wage and hour statements as required by
20 law and are presumed to have suffered injury and entitled to penalties under Labor Code §
21 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide
22 accurate and complete information as required by any one or more of items Labor Code § 226
23 (a)(1) to (9), inclusive, and the Plaintiffs and Class members cannot promptly and easily
24 determine from the wage statement alone one or more of the following: (i) The amount of the
25 gross wages or net wages paid to the employee during the pay period or any of the other
26 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
27 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross
28 wages to determine the net wages paid to the employee during the pay period, (iii) The name and

1 address of the employer and, (iv) The name of the employee and only the last four digits of his or
2 her social security number or an employee identification number other than a social security
3 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
4 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
5 without reference to other documents or information.

6 101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
7 are required “to pay each employee, on the established payday for the period involved, not less
8 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
9 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
10 or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Class members
11 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
12 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 or 18 of the
13 applicable IWC Wage Orders. To the extent Plaintiffs and the Class members were employed by
14 Defendants in their capacity as a temporary services employer, Defendants failed to timely pay all
15 wages owed and provide accurate wage statements to Plaintiffs and the Class members on a
16 weekly basis, as required under Labor Code § 201.3.

17 102. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
18 § 226(a) and paragraphs 4(b), 7, and 20 or 18 of the applicable IWC Wage Orders, the Employees
19 in the Class suffered injuries, including among other things confusion over whether they received
20 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
21 forcing them to make mathematical computations to analyze whether the wages paid in fact
22 compensated them correctly for all hours worked.

23 103. Pursuant to Labor Code §§ 226(a) and 226(e), and the applicable IWC Wage
24 Orders, including paragraph , Plaintiffs and the Employee Class members are entitled to recover
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
26 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are
28 entitled to recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC

1 Wage Orders. They are also entitled to an award of costs and reasonable attorneys' fees.

2 **SIXTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 221**

4 **(Against All Defendants)**

5 104. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
6 full herein.

7 105. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
8 receive from an employee any part of wages theretofore paid by said employer to said employee."
9 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
10 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
11 to do so.

12 106. Defendants unlawfully received and/or collected wages from the Employees in the
13 Class by implementing a policy understating the hours worked by Employees by requiring off the
14 clock work, as alleged above. In such instances, Plaintiffs and the Class members had their wages
15 unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping
16 records than were in fact worked, including by rounding down to the detriment of Employees.
17 Upon information and belief, Defendants took the same unlawful deduction from the other Class
18 members as were reflected on Plaintiffs' wage statements. Defendants unlawfully deducted, and
19 upon information and belief continue to deduct, wages earned by and owed to Plaintiffs and the
20 Class members, in violation of Labor Code § 221.

21 107. As a direct and proximate cause of the unauthorized deductions, Employees have
22 been damaged, in an amount to be determined at trial, including an amount equal to restitution of
23 the unlawfully deducted wages plus interest.

24 **SEVENTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 204**

26 **(Against All Defendants)**

27 108. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 109. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
4 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
5 during which the labor was performed, and labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
7 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
8 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.” As detailed above, Defendants
10 maintained a consistently applied policy and practice of not paying all wages earned between the
11 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
12 between the 16th and the last day of the month between the 1st and 10th day of the following month.
13 This included failing to pay all wages due and owing to Plaintiffs and the Class members for all
14 hours they worked and failing to pay all wages earned by not more than seven calendar days
15 following the close of the payroll period.

16 110. Defendants also required Plaintiffs and the Class members to work hours off the
17 clock for which they were not compensated, including during interrupted or otherwise on-duty
18 meal and rest periods. Defendants also took unlawful deductions and failed to pay all overtime and
19 double time premium wages owed for work performed during a work shift and a workday, as
20 addressed above. Therefore, when Class members received wage statements and pay checks which
21 did not include payments at the correct rates for all hours worked during that pay period, or
22 included unlawful deductions, Defendants failed to compensate Plaintiffs and the Class members
23 for all their hours worked on a timely basis, resulting in Defendants’ systematic failure to pay all
24 wages owed to Plaintiffs and the Class members twice monthly in accordance with the
25 requirements of Labor Code § 204.

26 111. Given the above described off the clock work and unlawful rounding and
27 deductions from hours worked perpetrated by Defendants’ management, Plaintiffs would often
28 notice on their wage statements that they were being paid for substantially fewer hours than they

1 actually worked, and that they were not paid at the correct overtime or double time rates for all
2 hours worked. Defendants' uniformly applied payroll policies and practices thus resulted in further
3 systematic and ongoing violations of the requirements of Labor Code § 204.

4 112. All wages due and owing to Plaintiffs and the Class members, including as required
5 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
6 required by Labor Code § 1194 and other sections became due and payable to each employee in
7 each pay period that he or she was not provided with a meal period or rest period or paid straight
8 or overtime wages to which he or she was entitled.

9 113. Defendants violated Labor Code § 204 by systematically refusing to timely pay
10 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
11 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
12 payday for the period involved, not less than the applicable minimum wage for all hours worked in
13 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
14 hours than those fixed by the order or under conditions of labor prohibited by the order is
15 unlawful." Plaintiffs and the Class members may therefore pursue damages and penalties for
16 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
17 penalties under paragraph 20 or 18 of the applicable IWC Wage Orders.

18 114. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
19 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
20 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
21 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 or 18 of the
22 applicable IWC Wage Orders.

23 **EIGHTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 203**
25 **(Against All Defendants)**

26 115. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 116. Plaintiffs and numerous Class members are no longer employed by Defendants;

1 they either quit Defendants' employ or were fired therefrom.

2 117. Defendants failed to pay these Employees all wages due and certain at the time of
3 termination or within seventy-two hours of resignation, as addressed in detail above.

4 118. The wages withheld from these Employees by Defendants remained due and owing
5 for more than thirty days from the date of separation from employment.

6 119. Defendants failed to pay Plaintiffs and the Class members without abatement, all
7 wages as defined by applicable California law. Among other things, these Employees were not
8 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
9 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
10 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
11 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
12 required time was willful within the meaning of Labor Code § 203.

13 120. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
14 are required "to pay each employee, on the established payday for the period involved, not less
15 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
16 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
17 or under conditions of labor prohibited by the order is unlawful." Plaintiffs and the Class members
18 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
19 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 or 18 of the
20 applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and
21 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
22 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
23 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
24 "violates...any provision of this chapter or any order or ruling of the commission."

25 121. Defendants' failure to pay wages, as alleged, entitles Plaintiffs and these former
26 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
27 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
28 shall continue until paid for up to thirty (30) days from the date they were due.

NINTH CAUSE OF ACTION
FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
UNDER LABOR CODE § 2802
(Against All Defendants)

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

123. Plaintiffs and the Class are informed and believe and based thereon allege that throughout the period applicable, Defendants required Plaintiffs and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. For example, Defendants' managers and supervisors contacted Plaintiffs on their personal cellular phone on a daily basis to request information and to address scheduling and the hours they worked, and such calls came when they were both on and off duty. While on duty, Plaintiffs were required to use their cell phones for work and job duty related purposes, such as reviewing blueprints and plans and the like. Plaintiffs and other Class members were also required to use their cellular phones for alleged timekeeping and pay purposes.

124. Plaintiffs and the other Class members were also required to purchase and use their own tools in performing their daily job duties without reimbursement, as Defendants provided no tools or equipment to utilize at the work sites. Plaintiffs and upon information and belief other Class members were also required to drive their own vehicles during work shifts and to and from work site locations. Defendants did not reimburse Plaintiffs and the Class members for their mileage or other expenses incurred in transporting themselves to assigned work locations.

125. Defendants thus followed a uniform policy and practice of failing to reimburse Employees in the Class for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

126. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiffs and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related

1 expenses. As Defendants failed to inform and misled Plaintiffs and the Class members with regard
2 to their rights, Plaintiffs and the Class members were led to believe that incurring those lawful and
3 necessary expenses was an expected and essential function of their employment with Defendants
4 and that failure to incur those expenses would have adverse consequences on their employment.

5 127. Therefore, Plaintiffs and the Class members are entitled to reimbursement for any
6 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
7 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
8 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
9 from the date Plaintiffs and the Class members incurred those expenses. Further, Plaintiffs and the
10 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

11 **TENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

13 **(Against All Defendants)**

14 128. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 129. Plaintiffs, on behalf of themselves, the Employees in the Class, and the general
17 public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
18 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
19 harmful to Employees and the general public. Plaintiffs seek to enforce important rights affecting
20 the public interest within the meaning of Code of Civil Procedure § 1021.5.

21 130. Plaintiffs are each a "person" within the meaning of Business & Professions Code
22 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
23 injunctive relief, restitution, and other appropriate equitable relief.

24 131. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
25 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
26 fraudulent in that Defendants' policy and practice failed to provide the required amount of
27 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiffs and
28 Class members for all hours worked or reimburse them for necessary business expenses, due to

1 systematic business practices as alleged herein that cannot be justified, pursuant to the applicable
2 California Labor Code and Industrial Welfare Commission requirements in violation of California
3 Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
4 and equitable relief, pursuant to California Business & Professions Code § 17203, including
5 restitution of wages wrongfully withheld.

6 132. Wage-and-hour laws express fundamental public policies. Paying employees their
7 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
8 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
9 vigorously to enforce minimum labor standards, to ensure that employees are not required or
10 permitted to work under substandard and unlawful conditions, and to protect law-abiding
11 employers and their employees from competitors who lower costs to themselves by failing to
12 comply with minimum labor standards.

13 133. Defendants have violated statutes and public policies. Through the conduct alleged
14 in this Complaint Defendants have acted contrary to these public policies, have violated specific
15 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
16 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,
17 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
18 guaranteed to all employees under the law.

19 134. Defendants' conduct, as alleged above, constitutes unfair competition in violation
20 of the Business & Professions Code § 17200 *et seq.*

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

25 136. By the conduct alleged herein, Defendants have engaged and continue to engage in
26 a business practice which violates California and federal law, including but not limited to, the
27 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
28 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court

1 should issue declaratory and other equitable relief pursuant to California Business & Professions
2 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
3 competition, including restitution of wages wrongfully withheld.

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

6 138. Unless restrained by this Court, Defendants will continue to engage in the unlawful
7 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
8 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
9 the use by Defendants or their agents or employees of any unlawful or deceptive practice
10 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
11 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
12 failed to pay.

13 **ELEVENTH CAUSE OF ACTION**

14 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

15 **(Against All Defendants)**

16 139. Plaintiffs reallege and incorporate all preceding paragraphs, as though set forth in
17 full herein.

18
19 140. Plaintiffs and the Employees in the Class are also aggrieved employees as defined
20 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
21 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
22 period.

23 141. In failing to pay Aggrieved Employees minimum wages and overtime, not
24 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
25 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
26 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
27 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
28 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and

1 paragraph 7 of the applicable IWC Wage Orders.

2 142. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
3 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
4 including the penalty provisions, without limitation, based, inter alia, on the following California
5 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
6 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

7 143. More specifically, after complying with the notice procedures of Labor Code §
8 2699.3, Plaintiffs assert, as a representative action on behalf of the California Attorney General
9 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
10 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
11 including as follows:

12 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
13 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
14 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
15 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
16 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
17 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
18 to Labor Code § 2699(g)(1);

19 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
20 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
21 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
22 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
23 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
24 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
25 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
26 pursuant to Labor Code § 2699(g)(1);

27 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
28 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to

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

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the

applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

144. As also addressed above, Plaintiffs, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any 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...

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

145. Plaintiffs have exhausted their administrative remedies by submitting a certified letter to the LWDA and Defendants on June 29, 2023 (LWDA Case No. LWDA-CM-965337-23) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;

- 1 3. For liquidated damages in the amount equal to the unpaid minimum wage and
2 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 3 4. For compensatory damages in the amount of all unpaid wages, including overtime
4 and double-time pay, as may be proven;
- 5 5. For compensatory damages in the amount of the hourly wage made by Employees
6 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
7 years prior to the filing of this action, as may be proven;
- 8 6. For compensatory damages in the amount of the hourly wage made by Employees
9 for each day requisite rest breaks were not provided or were deficiently provided where no
10 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
11 be proven;
- 12 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 13 8. For restitution and/or damages and penalties for Defendants' failure to pay all
14 wages due twice monthly under Labor Code § 204, as may be proven;
- 15 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
16 for all class members in violation of Labor Code § 221, as may be proven;
- 17
- 18 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
19 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 20 11. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
21 pay minimum wage;
- 22 12. For damages and restitution for failure to reimburse all reasonable and necessary
23 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
- 24 13. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
25 pay minimum wages;
- 26 14. For restitution for unfair competition pursuant to Business & Professions Code
27 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 28 15. For an order enjoining Defendants and their agents, servants, and employees, and

1 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
2 duties as alleged in this Complaint;

- 3 16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
4 17. For penalties under Labor Code § 558, as may be proven;
5 18. For other wages and penalties under the Labor Code as may be proven;
6 19. For all general, special, and incidental damages as may be proven;
7 20. For an award of pre-judgment and post-judgment interest;
8 21. For an award providing for the payment of the costs of this suit;
9 22. For an award of attorneys' fees; and
10 23. For such other and further relief as this Court may deem proper and just.

11
12 DATED: September 6, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

13
14 By 
15 David Yeremian
16 Alvin B. Lindsay
17 Attorneys for Plaintiffs HECTOR GOMEZ
18 and SALVADOR TORRES, on behalf
19 of themselves and all others similarly situated
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DATED: September 6, 2023

By 
David Yermian
Alvin B. Lindsay
Attorneys for Plaintiffs HECTOR GOMEZ
and SALVADOR TORRES, on behalf
of themselves and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

California Environmental Systems, Inc.
Carter Pierce, Agent for Service
12265 Locksley Ln.,
Auburn, CA 95602

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF PLACER Branch Name: Mailing Address: 10820 Justice Center Dr City, State and Zip Code: Roseville CA 95661	
SHORT TITLE: Gomez, Hector et al vs. California Environmental Systems, Inc., a California Corporation	CASE NUMBER: S-CV-0050786
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of PLACER. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 8219511_2023_09_06_20_22_27_395_5
 Submission Number: 23PL00095153
 Court Received Date: 09/06/2023
 Court Received Time: 1:47 pm
 Case Number: S-CV-0050786
 Case Title: Gomez, Hector et al vs. California Environmental Systems, Inc., a California Corporation
 Location:
 Case Type: Civil Unlimited
 Case Category: Employment: Other (15)
 Jurisdictional Amount: Complex Case
 Notice Generated Date: 09/07/2023
 Notice Generated Time: 4:29 pm

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Complaint: 1st Amended	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859