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Superior Court of CA,
County of Santa Clara
26CV493109
Reviewed By: J. Angel

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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12 **(UNLIMITED JURISDICTION)**

13 EDWIN RUIZ, as an “aggrieved employee” on
behalf of himself and other similarly situated
14 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

15
16 *Plaintiff,*

17 vs.

18 KILLROY PEST CONTROL, INC., a California
19 corporation; LYNN ELIZABETH OLAVARRI,
a natural person; MATTHEW LARA, a natural
20 person; and DOES 1–50, inclusive,

21 *Defendants.*
22

Case No.: 26CV493109

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, Edwin Ruiz (hereafter “Plaintiff” or “Ruiz”), on behalf of himself, the State of
2 California, and the other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants Killroy Pest Control, Inc., a California corporation, Lynn
7 Elizabeth Olavarri, a natural person, Matthew Lara, a natural person, and DOES 1-50, inclusive
(collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
10 and other related relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, and overtime wages earned for
12 all hours worked at the correct rates of pay;

13 (B) Pay wages at the rates guaranteed by contract and/or statute;

14 (C) Provide all meal periods;

15 (D) Authorize and permit all rest breaks;

16 (E) Pay premium wages for unprovided meal periods;

17 (F) Pay premium wages for unprovided rest breaks;

18 (G) Indemnify for necessary work-related expenditures;

19 (H) Only deduct wages lawfully;

20 (I) Issue only accurate and complete itemized wage statements;

21 (J) Provide signed and complete commission agreements;

22 (K) Timely pay wages during employment;

23 (L) Timely pay wages upon termination of employment;

24 (M) Maintain accurate employment records.

25 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
26 representative action.

27 **II. THE PARTIES**

28 3. Plaintiff Edwin Ruiz is resident of California.

4. Defendant Killroy Pest Control, Inc. is a corporation organized and existing under
the laws of California and also a citizen of California based on Plaintiff’s information and belief.



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1 5. Defendant Lynn Elizabeth Olavarri is a natural person and also a citizen of
2 California based on Plaintiff's information and belief.

3 6. Defendant Matthew Lara is a natural person and also a citizen of California based
4 on Plaintiff's information and belief.

5 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
6 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
7 is informed and believes and thereon alleges that said Defendants are legally responsible for the
8 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
9 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

10 8. The "Aggrieved Employees" are all individuals the Defendants have employed or
11 otherwise contracted with in California as hourly, non-exempt workers, including pest
12 management specialists, individuals performing work comparable to the aforementioned, and
13 individuals in similar positions during the period beginning one year before the Plaintiff's notice
14 of January 26, 2026 to the California Labor and Workforce Development Agency and ending on
the date judgment is entered.

15 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
17 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
18 and scope of such agency or employment, and with the approval and ratification of each of the
19 other Defendants.

20 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
Employees in accordance with applicable California labor laws as alleged herein.

23 11. Plaintiff is informed and believes and thereon alleges that each and every one of
24 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
25 each acting as agents and/or employees, and/or under the direction and control of each of the other
26 defendants, and that said acts and failures to act were within the course and scope of said agency,
27 employment, and/or direction and control.

28 ///



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III. FACTUAL ALLEGATIONS

12. The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines “Public Housekeeping Industry” to mean

any industry, business, or establishment which provides meals, housing, **or maintenance services** whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and **includes, but is not limited to the following:**

...

(6) Establishments contracting for development, **maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units;**

...

Wage Order, § 2(R), emphasis added. At all relevant times during the applicable limitations period, the Defendants, Ruiz, and all of the Aggrieved Employees were covered by the Wage Order because the Defendants operated, and Ruiz, and all of the Aggrieved Employees, worked for one or more pest management and removal services providers. Accordingly, Ruiz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

13. On approximately November 14, 2016, the Defendants began to employ Ruiz in Campbell, California in the position of hourly, non-exempt pest management specialist. The Defendants continuously employed him in that capacity until on or about September 2, 2025, when his employment ended.

14. At all relevant times, the Defendants issued wages to Ruiz and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis, despite calculating and recording employee hours worked on a biweekly (26 paycheck/year) basis. The Defendants paid Plaintiff and the Aggrieved Employees by the hour but issued wages in a lump sum, reflected on their wage statements, that the Defendants claimed were equivalent to “salary.” At all relevant times, the Defendants classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

15. At all relevant times, the Defendants failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay.



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1 The Defendants required and expected Ruiz and the other Aggrieved Employees to work “off the
2 clock.” The Defendants demanded that Ruiz and the Aggrieved Employees complete
3 administrative tasks, including calling and emailing clients and completing notes on daily jobs,
4 both before and after their scheduled shifts, as well as to remain “on call” during such times in
5 the event that an emergency or rush job arose. The Defendants did not pay Ruiz or the Aggrieved
Employees for this time worked.

6 16. The Defendants also hired Ruiz and the Aggrieved Employees at varied hourly
7 rates of pay as non-exempt employees and promised to pay them biweekly (26 paychecks/year).
8 Instead of tracking and compensating actual regular and overtime hours worked, however, the
9 Defendants paid Ruiz and the other Aggrieved Employees a base pay per pay period covering ten
10 (10) days of work, eight (8) hours per day calculated as 40 hours per week, for an assumed 80
11 hours worked, on a semimonthly (24 paychecks/year) basis. When questioned about the practice
12 and policy, the Defendants claimed that Ruiz and the Aggrieved Employees were receiving a
13 salary plus a discretionary bonus of a percentage of sales and an incentive bonus. rather than
14 hourly compensation. The Defendants claimed that such “salary” was comparable to an hourly
15 rate for purposes of calculating vacation and sick pay. The Defendants did so despite failing to
16 calculate and ensure that the claimed “salary” paid to Ruiz and the Aggrieved Employees reflected
17 the minimum wages, and meal and rest break wages requirements, owed to non-exempt
18 employees under California law, and to Ruiz and the Aggrieved Employees in particular. The
19 Defendants’ false recording of meal and rest breaks further pushed the hourly wage paid as a lump
20 sum below the hourly minimum wage owed to Ruiz and the other Aggrieved Employees; because
21 bonuses paid were not guaranteed, such payments failed to raise Ruiz and the Aggrieved
Employees’ compensation up to the minimum wage owed.

22 17. Furthermore, the Defendants required Ruiz and the other Aggrieved Employees to
23 record off-duty meal breaks and rest breaks on employee timesheets/time records, despite the
24 Defendants’ awareness that the unreasonable workloads and time constraints assigned prevented
25 Ruiz and the Aggrieved Employees from taking off-duty breaks. The Defendants counted each
26 recorded meal and rest break as unpaid, and therefore did not compensate Ruiz and the Aggrieved
27 Employees for their time worked during on-duty breaks.

28 18. The Defendants agreed in hiring and policy documents to pay Ruiz and the other
Aggrieved Employees on a bi-weekly basis (26 paycheck/year), and represented to them that the



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1 Defendants did so. Instead, the Defendants issued wages on a semimonthly basis (24
2 paychecks/year). In this way, the Defendants regularly failed to pay Ruiz and the Aggrieved
3 Employees any minimum, regular, and/or overtime wages for one or more work days per pay
4 period, based on the Defendants' calculated eighty-hour pay period falsely recorded and paid to
5 each employee.

6 19. Finally, The Defendants expected Ruiz and all of the Aggrieved Employees to
7 work overtime and scheduled Ruiz and the Aggrieved Employees for more jobs per work day
8 than were possible to complete within eight hours. However, the Defendants often forbade Ruiz
9 and the Aggrieved Employees from recording any of their overtime hours, preventing them from
10 receiving any remuneration at all for the hours worked.

11 20. At all relevant times, the Defendants failed to compensate Ruiz and all of the other
12 Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40
13 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
14 expected Ruiz and all of the Aggrieved Employees to work more than eight hours in a day and
15 more than 40 hours in a week. The Defendants did so by scheduling Ruiz and the Aggrieved
16 Employees for more jobs per work day than were possible to complete within eight hours,
17 requiring Ruiz and the Aggrieved Employees to complete certain administrative tasks "off the
18 clock," expecting them to remain "on call" at certain times, and paying them a base pay described
19 as a "salary" regardless of actual hours worked. However, the Defendants often forbade Ruiz and
20 the Aggrieved Employees from recording any of their overtime hours, preventing them from
21 receiving remuneration for the hours worked. Furthermore, at all relevant times during their work
22 for the Defendants, Ruiz and all of the other Aggrieved Employees earned rest period premium
23 wages, meal period premium wages, bonuses/commission, and other non-discretionary
24 compensation during pay periods in which they worked hours qualifying for overtime premium
25 pay rates, but were not compensated for such work at the appropriate rates. Because Ruiz and the
26 Aggrieved Employees worked overtime hours, the Defendants owed them overtime premium
27 wages of time and one half their regular rates of pay for their work described above. The
28 Defendants did not pay overtime premium rates to Ruiz and the Aggrieved Employees for all
work on which the Defendants were required to pay such premium rates.

21. The Defendants promised in offer letters and in other comparable onboarding and
hiring paperwork to pay Plaintiff and the Aggrieved Employees specific hourly rates of pay above



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1 the mandated minimum wage for regular and overtime hours worked, as well as “discretionary”
2 bonuses of a calculated percentage of non-guaranteed sales in addition to required job duties, on
3 a biweekly (26 paychecks/year) basis. Instead, the Defendants paid Plaintiff and the other
4 Aggrieved Employees a “salary” base pay per pay period, based on an assumed ten (10) eight-
5 hour shifts with unpaid meal and rest breaks, which the Defendants falsely recorded in lieu of
6 accurate time tracking, on a semimonthly (24 paychecks/year). This base pay, when divided by
7 the assumed hours worked less the unpaid meal and rest breaks (which Plaintiff and the Aggrieved
8 Employees did not receive as described below), equaled less than the applicable minimum wage
9 and significantly less than the rates of pay stated in Plaintiff and the Aggrieved Employees’ hiring
10 paperwork. In this manner, the Defendants regularly secretly paid Plaintiff and the other
11 Aggrieved Employees lower wages than the minimum and contractually mandated wages, while
purporting to pay the wages designated by both statute and contract.

12 22. At all relevant times, the Defendants failed to provide Ruiz and all of the other
13 Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants did not
14 permit Ruiz and the other Aggrieved Employees to take 30-minute off duty meal periods at any
15 time. Though the Defendants represented to Ruiz and the Aggrieved Employees that they would
16 be assigned an average of two jobs per expected eight-hour shift, the Defendants often assigned
17 Ruiz and the Aggrieved Employees anywhere from five to twenty jobs per shift. The Defendants
18 thus forced Ruiz and the other Aggrieved Employees to remain on duty for their meal periods,
19 taking time to eat while driving between job sites if at all. Ruiz and the Aggrieved Employees
20 also often began their off-duty meal breaks well after their fifth hour of work in each shift, based
21 on the timing and workload of their assigned jobs. Because the Defendants managed job
22 assignments for Ruiz and each of the Aggrieved Employees, the Defendants were aware that the
23 assigned workload rendered Ruiz and the Aggrieved Employees unable to take 30-minute off duty
24 meal breaks as required by California law, and that they were often unable to take any breaks
25 prior to the fifth hour worked. Nonetheless, the Defendants required Ruiz and the Aggrieved
26 Employees to mark on their employee timesheets that they had taken the mandated meal breaks.
27 The Defendants did not pay them for this time worked. The Defendants also failed to pay premium
28 wages for days on which they failed to provide Ruiz and all of the other Aggrieved Employees
with meal periods as required by law.

23. At all relevant times, the Defendants failed to authorize and permit Ruiz and all of



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1 the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours
2 worked or major portion thereof. The Defendants did not permit Ruiz and the other Aggrieved
3 Employees to take 10-minute off duty rest breaks at any time. Though the Defendants represented
4 to Ruiz and the Aggrieved Employees that they would be assigned an average of two jobs per
5 expected eight-hour shift, the Defendants often assigned Ruiz and the Aggrieved Employees
6 anywhere from five to twenty jobs per shift. The Defendants thus forced Ruiz and the other
7 Aggrieved Employees to remain on duty for their rest breaks. Because the Defendants managed
8 job assignments for Ruiz and each of the Aggrieved Employees, the Defendants were aware that
9 the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 10-minute off
10 duty rest breaks as required by California law. Nonetheless, the Defendants required Ruiz and the
11 Aggrieved Employees to mark on their employee timesheets that they had taken the mandated
12 rest breaks. The Defendants also failed to pay premium wages for days on which they failed to
13 authorize and permit Ruiz and all of the other Aggrieved Employees to take rest breaks as required
14 by law.

15 24. At all relevant times, the Defendants required Ruiz and all of the other Aggrieved
16 Employees to incur certain business expenses in the course of performing their duties. The
17 Defendants required Ruiz and all of the other Aggrieved Employees to supply mobile phones and
18 telecom services to perform their job duties. However, the Defendants did not provide these items
19 and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Defendants
20 required Ruiz and the Aggrieved Employees to monitor mobile phones and communicate with
21 both the Defendants and the clients via text, call, and email, both during their scheduled shifts
22 and while “on call” or completing administrative tasks “off the clock.” Although the Defendants
23 provided work phones to Ruiz and the other Aggrieved Employees, the Defendants did not permit
24 work phone use outside of scheduled shift hours. The Defendants thus expected and were aware
25 that Ruiz and the Aggrieved Employees used their personal mobile phones and cellular service
26 for work purposes while “off the clock” and “on call.”

27 25. At all relevant times, the Defendants unlawfully deducted wages belonging to Ruiz
28 and all of the other Aggrieved Employees. The Defendants regularly deducted prepaid portions
of bonuses, labeled “incentives,” and marked such deductions on the paystubs provided to Ruiz
and the Aggrieved Employees.

26. At all relevant times, the Defendants failed to provide signed and complete



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1 commission agreements. The Defendants purported to pay Plaintiff and the Aggrieved Employees
2 “discretionary” bonuses, labeled as such in both hiring paperwork and on employee wage
3 statements; the Defendants paid all bonuses separately from the aforementioned hourly/“salary”
4 payments for regular work duties and issued separate wage statements. Per the offer letters and
5 hiring paperwork provided to Plaintiff and the Aggrieved Employees, such bonuses became
6 available after three months of work and were not actually discretionary, as they were calculated
7 using a fixed formula based on a percentage of accounts sold and/or signed on. These bonuses
8 were therefore essentially commissions on sales made by Plaintiff and the Aggrieved Employees;
9 however, because sales were neither guaranteed nor required as part of employees’ work duties,
10 the commissions could not be included by the Defendants in calculating wage payments to
11 Plaintiff and the Aggrieved Employees. The Defendants did not provide written contracts
12 outlining the terms of employees’ commission structure, signed by Plaintiff and the other
13 Aggrieved Employees, either at hiring or once they became eligible to earn commissions, as
14 required by California law. In fact, the Defendants unilaterally changed the formulas used for
15 calculating individual employees’ commission percentages several times without providing
16 written, signed notice of the new structure to Plaintiff and the Aggrieved Employees.

17 27. At all relevant times, the Defendants failed to issue to Ruiz and all of the other
18 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
19 correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to
20 state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the
21 unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all
22 regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest
23 break premium wages earned, all unlawfully deducted wages, all hourly rates, all hours work at
24 each rate of pay, and related information. The Defendants classified Ruiz and the other Aggrieved
25 Employees as non-exempt, hourly employees. However, the Defendants failed to include the
26 number of hours worked and the applicable rates of pay on Ruiz and the Aggrieved Employees’
27 wage statements. Instead, the Defendants included only the sum total paid for each pay period
28 and paid bonuses/commission and incentives via separate non-itemized wage statements.

29 28. At all relevant times, the Defendants also failed to timely pay Ruiz and all of the
30 other Aggrieved Employees all earned wages as described above during and at the conclusion of
31 employment.



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29. At all relevant times, the Defendants failed to maintain accurate employee records of Ruiz and all of the other Aggrieved Employees.

30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

A. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;

B. Not provided with all off-duty meal periods;

C. Not authorized and permitted to take all rest break periods;

D. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;

E. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;

F. Secretly paid lower wages than required by contract and/or statute;

G. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;

H. Not provided signed and complete commission agreements;

I. Not provided with accurate and complete wage statements; and

J. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

IV. FIRST (AND ONLY) CAUSE OF ACTION
CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all Defendants)

31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

32. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

33. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."



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1 34. Section 3 of the Wage Order states:

2 (A) Daily Overtime - General Provisions

3 (1) The following overtime provisions are applicable to
4 employees 18 years of age or over and to employees 16 or
5 17 years of age who are not required by law to attend
6 school and are not otherwise prohibited by law from
7 engaging in the subject work. Such employees shall not be
8 employed more than eight (8) hours in any workday or
9 more than 40 hours in any workweek unless the employee
10 receives one and one-half (1 ½) times such employee's
11 regular rate of pay for all hours worked over 40 hours in
12 the workweek. Eight (8) hours of labor constitutes a day's
13 work. Employment beyond eight (8) hours in any workday
14 or more than six (6) days in any workweek is permissible
15 provided the employee is compensated for such overtime
16 at not less than:

17 (a) One and one-half (1 ½) times the employee's
18 regular rate of pay for all hours worked in excess of
19 eight (8) hours up to and including 12 hours in any
20 workday, and for the first eight (8) hours worked on
21 the seventh (7th) consecutive day of work in a
22 workweek.

23 (b) Double the employee's regular rate of pay for all
24 hours worked in excess of 12 hours in any workday
25 and for all hours worked in excess of eight (8) hours
26 on the seventh (7th) consecutive day of work in a
27 workweek.

28 (c) The overtime rate of compensation required to be
 paid to a nonexempt full-time salaried employee
 shall be computed by using the employee's regular
 hourly salary as one-fortieth (1/40) of the
 employee's weekly salary.

 35. Under the definitions outlined in Wage Order 5, the term "hours worked" means
the time during which an employee is suffered or permitted to work for the employer, whether or
not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards
Act ("FLSA"). Wage Order 5, § 2(K).The FLSA does not define the phrase "hours worked."
However, it is defined by federal regulations:



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1 “...As a general rule the term “hours worked” will include: (a) All time
2 during which an employee is required to be on duty or to be on the
3 employer’s premises or at a prescribed workplace and (b) all time during
4 which an employee is suffered or permitted to work whether or not he is
5 required to do so. Thus, working time is not limited to the hours spent in
6 active productive labor, but includes time given by the employee to the
7 employer even though part of the time may be spent in idleness. Some of
8 the hours spent by employees, under certain circumstances... in meal
9 periods and rest periods are regarded as working time and some are not.
10 The governing principles are discussed in part 785 of this chapter
11 (interpretative bulletin on “hours worked”) and part 790 of this chapter
12 (statement of effect of Portal-to-Portal Act of 1947). ...”

13 29 C.F.R. § 778.223

14 “The United States Supreme Court originally stated that employees
15 subject to the act must be paid for all time spent in “physical or mental
16 exertion (whether burdensome or not) controlled or required by the
17 employer and pursued necessarily and primarily for the benefit of the
18 employer and his business.” (*Tennessee Coal, Iron & Railroad Co. v.*
19 *Muscoda Local No. 123* (1944) 321 U. S. 590). Subsequently, the Court
20 ruled that there need be no exertion at all and that all hours are hours
21 worked which the employee is required to give his employer, that “an
22 employer, if he chooses, may hire a man to do nothing, or to do nothing
23 but wait for something to happen. Refraining from other activity often is
24 a factor of instant readiness to serve, and idleness plays a part in all
25 employments in a stand-by capacity. Readiness to serve may be hired,
26 quite as much as service itself, and time spent lying in wait for threats to
27 the safety of the employer’s property may be treated by the parties as a
28 benefit to the employer.” *Armour & Co. v. Wantock* (1944) 323 U.S.
126; *Skidmore v. Swift* (1944) 323 U.S. 134. The workweek ordinarily
includes “all the time during which an employee is necessarily required to
be on the employer’s premises, on duty or at a prescribed work place.”
Anderson v. Mt. Clemens Pottery Co. (1946) 328 U.S. 680. The Portal-to-
Portal Act did not change the rule except to provide an exception for
preliminary and postliminary activities. See Section 785.34.”

29 C.F.R. § 785.7.

36. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that
an employer has actual or constructive knowledge that employees are working.



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1 37. Labor Code section 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
3 in one workday and any work in excess of 40 hours in any one workweek and the
4 first eight hours worked on the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the regular rate of
6 pay for an employee. Any work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an
8 employee. In addition, any work in excess of eight hours on any seventh day of a
9 workweek shall be compensated at the rate of no less than twice the regular rate of
10 pay of an employee. Nothing in this section requires an employer to combine more
11 than one rate of overtime compensation in order to calculate the amount to be paid
12 to an employee for any hour of overtime work.

13 38. Labor Code section 1194 invalidates any agreement between an employer and an
14 employee to work for less than the minimum wage required under the applicable Wage Order.

15 39. Labor Code section 1197 makes it unlawful for an employer to pay an employee
16 less than the minimum wage required under the applicable Wage Order for all hours worked
17 during a payroll period.

18 40. Labor Code section 1198 makes it unlawful for an employer to employ an
19 employee under conditions that violate the Wage Order.

20 41. In conjunction, these provisions of the Labor Code require employers to pay non-
21 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
22 worked, including unrecorded hours when the employer knew or reasonably should have known
23 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
24 Cal.4th 575, 585.)

25 42. At all relevant times during the applicable limitations period, Defendants failed to
26 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
27 limited to minimum, regular, and overtime wages for all minimum, regular and overtime hours,
28 respectively, that they worked at the correct rates of pay.

 43. The Defendants required and expected Ruiz and the other Aggrieved Employees
 to work "off the clock." The Defendants demanded that Ruiz and the Aggrieved Employees
 complete administrative tasks, including calling and emailing clients and completing notes on
 daily jobs, both before and after their scheduled shifts, as well as to remain "on call" during such
 times in the event that an emergency or rush job arose. The Defendants did not pay Ruiz or the



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1 Aggrieved Employees for this time worked.

2 44. The Defendants also hired Ruiz and the Aggrieved Employees at varied hourly
3 rates of pay as non-exempt employees and promised to pay them biweekly (26 paychecks/year).
4 Instead of tracking and compensating actual regular and overtime hours worked, however, the
5 Defendants paid Ruiz and the other Aggrieved Employees a base pay per pay period covering ten
6 (10) days of work, eight (8) hours per day calculated as 40 hours per week, for an assumed 80
7 hours worked, on a semimonthly (24 paychecks/year) basis. When questioned about the practice
8 and policy, the Defendants claimed that Ruiz and the Aggrieved Employees were receiving a
9 salary plus a discretionary bonus of a percentage of sales and an incentive bonus. rather than
10 hourly compensation. The Defendants claimed that such “salary” was comparable to an hourly
11 rate for purposes of calculating vacation and sick pay. The Defendants did so despite failing to
12 calculate and ensure that the claimed “salary” paid to Ruiz and the Aggrieved Employees reflected
13 the minimum wages, and meal and rest break wages requirements, owed to non-exempt
14 employees under California law, and to Ruiz and the Aggrieved Employees in particular. The
15 Defendants’ false recording of meal and rest breaks further pushed the hourly wage paid as a lump
16 sum below the hourly minimum wage owed to Ruiz and the other Aggrieved Employees; because
17 bonuses paid were not guaranteed, such payments failed to raise Ruiz and the Aggrieved
18 Employees’ compensation up to the minimum wage owed.

19 45. Furthermore, the Defendants required Ruiz and the other Aggrieved Employees to
20 record off-duty meal breaks and rest breaks on employee timesheets/time records, despite the
21 Defendants’ awareness that the unreasonable workloads and time constraints assigned prevented
22 Ruiz and the Aggrieved Employees from taking off-duty breaks. The Defendants counted each
23 recorded meal and rest break as unpaid, and therefore did not compensate Ruiz and the Aggrieved
24 Employees for their time worked during on-duty breaks.

25 46. The Defendants agreed in hiring and policy documents to pay Ruiz and the other
26 Aggrieved Employees on a bi-weekly basis (26 paycheck/year), and represented to them that the
27 Defendants did so. Instead, the Defendants issued wages on a semimonthly basis (24
28 paychecks/year). In this way, the Defendants regularly failed to pay Ruiz and the Aggrieved
Employees any minimum, regular, and/or overtime wages for one or more work days per pay
period, based on the Defendants’ calculated eighty-hour pay period falsely recorded and paid to
each employee.



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1 47. The Defendants also expected Ruiz and all of the Aggrieved Employees to work
2 overtime and scheduled Ruiz and the Aggrieved Employees for more jobs per work day than were
3 possible to complete within eight hours. However, the Defendants often forbade Ruiz and the
4 Aggrieved Employees from recording any of their overtime hours, preventing them from
5 receiving any remuneration at all for the hours worked.

6 48. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
7 other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day,
8 over 40 in a week, and for the first eight hours of the seventh day of the workweek. The
9 Defendants expected Plaintiff and all of the Aggrieved Employees to work more than eight hours
10 in a day and more than 40 hours in a week. The Defendants did so by scheduling Plaintiff and the
11 Aggrieved Employees for more jobs per work day than were reasonable to complete within eight
12 hours, requiring Plaintiff and the Aggrieved Employees to complete certain administrative tasks
13 “off the clock,” expecting them to remain “on call” at certain times, and paying them a base pay
14 described as a “salary” regardless of actual hours worked. However, the Defendants often forbade
15 Plaintiff and the Aggrieved Employees from recording any of their overtime hours, preventing
16 them from receiving remuneration for the hours worked. Furthermore, at all relevant times during
17 their work for the Defendants, Ruiz and all of the other Aggrieved Employees earned rest period
18 premium wages, meal period premium wages, bonuses/commission, and other non-discretionary
19 compensation during pay periods in which they worked hours qualifying for overtime premium
20 pay rates, but were not compensated for such work at the appropriate rates. Because Ruiz and the
21 Aggrieved Employees worked overtime hours, the Defendants owed them overtime premium
22 wages of time and one half their regular rates of pay for their work described above. The
23 Defendants did not pay overtime premium rates to Plaintiff and the Aggrieved Employees for all
24 work on which the Defendants were required to pay such premium rates.

25 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
27 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
28 required by California law.

B. UNLAWFUL WAGE DEDUCTIONS

50. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
receive from an employee any part of wages theretofore paid by said employer to said employee.”

1 The Defendants deducted wages from the wages earned by Plaintiff and all of the other Aggrieved
2 Employees in violation of Labor Code § 221.

3 51. Defendants regularly deducted prepaid portions of bonuses, labeled “incentives,”
4 and marked such deductions on the paystubs provided to Plaintiff and the Aggrieved Employees.

5 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times and
6 based on the above facts, Defendants maintained a policy and/or practice, or lack thereof, which
7 resulted in Defendants’ deduction of wages belonging to Plaintiff and the other Aggrieved
8 Employees in violation of California law. Accordingly, Ruiz seeks an award of civil penalties
9 against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows:
10 \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for
11 each aggrieved employee for each subsequent violation, or any willful or intentional violation of
12 Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee
(penalties set by Labor Code § 225.5).

13 **C. UNDERPAYMENT OF WAGES GUARANTEED BY CONTRACT AND/OR**
14 **STATUTE**

15 53. Under Labor Code § 223, “Where any statute or contract requires an employer to
16 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
purporting to pay the wage designated by statute or by contract.”

17 54. The Defendants promised in offer letters and in other comparable onboarding and
18 hiring paperwork to pay Plaintiff and the Aggrieved Employees specific hourly rates of pay above
19 the mandated minimum wage for regular and overtime hours worked, as well as “discretionary”
20 bonuses of a calculated percentage of non-guaranteed sales in addition to required job duties, on
21 a biweekly (26 paychecks/year) basis. Instead, the Defendants paid Plaintiff and the other
22 Aggrieved Employees a “salary” base pay per pay period, based on an assumed ten (10) eight-
23 hour shifts with unpaid meal and rest breaks, which the Defendants falsely recorded in lieu of
24 accurate time tracking, on a semimonthly (24 paychecks/year). This base pay, when divided by
25 the assumed hours worked less the unpaid meal and rest breaks (which Plaintiff and the Aggrieved
26 Employees did not receive), equaled less than the applicable minimum wage and significantly
27 less than the rates of pay stated in Plaintiff and the Aggrieved Employees’ hiring paperwork. In
28 this manner, the Defendants regularly secretly paid Plaintiff and the other Aggrieved Employees
lower wages than the minimum and contractually mandated wages, while purporting to pay the



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wages designated by both statute and contract.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times and based on the above facts, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants secretly paying a lower wage to Plaintiff and the Aggrieved Employees while purporting to pay the wage designated by statute or by contract to Plaintiff and the other Aggrieved Employees in violation of California law.

D. FAILURE TO PROVIDE MEAL PERIODS

56. In relevant part, section 2(K) of the Wage Order states, “ ‘Hours worked’ means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

57. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

58. Under the definitions laid out in Wage Order 5, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act (“FLSA”). Wage Order 5, § 2(K). The FLSA does not define the phrase “hours worked.” However, it is defined by federal regulations:

...As a general rule the term “hours worked” will include: (a) All time during which an employee is required to be on duty or to be on the employer’s premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances... in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on “hours worked”) and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). ...

29 C.F.R. § 778.223



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1 The United States Supreme Court originally stated that employees subject
2 to the act must be paid for all time spent in “physical or mental exertion
3 (whether burdensome or not) controlled or required by the employer and
4 pursued necessarily and primarily for the benefit of the employer and his
5 business.” (*Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No.*
6 *123* (1944) 321 U. S. 590). Subsequently, the Court ruled that there need
7 be no exertion at all and that all hours are hours worked which the
8 employee is required to give his employer, that “an employer, if he
9 chooses, may hire a man to do nothing, or to do nothing but wait for
10 something to happen. Refraining from other activity often is a factor of
11 instant readiness to serve, and idleness plays a part in all employments in
12 a stand-by capacity. Readiness to serve may be hired, quite as much as
13 service itself, and time spent lying in wait for threats to the safety of the
14 employer’s property may be treated by the parties as a benefit to the
15 employer.” *Armour & Co. v. Wantock* (1944) 323 U.S. 126; *Skidmore v.*
16 *Swift* (1944) 323 U.S. 134. The workweek ordinarily includes “all the time
17 during which an employee is necessarily required to be on the employer’s
18 premises, on duty or at a prescribed work place.” *Anderson v. Mt. Clemens*
19 *Pottery Co.* (1946) 328 U.S. 680. The Portal-to-Portal Act did not change
20 the rule except to provide an exception for preliminary and postliminary
21 activities. See Section 785.34.

22 29 C.F.R. § 785.7.

23 Rest periods of short duration, running from 5 minutes to about 20
24 minutes, are common in industry. They promote the efficiency of the
25 employee and are customarily paid for as working time. They must be
26 counted as hours worked. Compensable time of rest periods may not be
27 offset against other working time such as compensable waiting time or on-
28 call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10,
1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D.
Cal. 1945))

29 29 C.F.R. § 785.18.

30 Bona fide meal periods are not worktime. Bona fide meal periods do not
31 include coffee breaks or time for snacks. These are rest periods. The
32 employee must be completely relieved from duty for the purposes of
33 eating regular meals. Ordinarily 30 minutes or more is long enough for a
34 bona fide meal period. A shorter period may be long enough under special
35 conditions. The employee is not relieved if he is required to perform any
36 duties, whether active or inactive, while eating. For example, an office
37 employee who is required to eat at his desk or a factory worker who is
38 required to be at his machine is working while eating. *Culkin v. Glenn L.*
Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff’d 197 F. 2d



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1 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock*
2 *& Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A.
3 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C.A. 9, 1950), 187
4 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3
5 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); *Lofton*
6 *v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para.
7 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert.
8 denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases
9 para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz*
10 *Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

11 29 C.F.R. § 785.19. Employees who were required to wear pagers and respond to patient
12 emergencies during meal breaks were held entitled to payment from their employer for meal
13 breaks because their employer had not fully relieved them of their responsibilities during those
14 times. *Hoffman v. St. Joseph's Hosp.*, 1998 U.S. Dist. LEXIS 7911 (N.D. Ga. Apr. 14, 1998); see
15 also *Havrilla v. United States*, 125 Fed. Cl. 454, 2016 U.S. Claims LEXIS 192 (Mar. 14, 2016)
16 (employees required to work during half hour meal break given that they had to stay at the facility
17 and be available to respond to requests to return or check out weapons and equipment); *Wahl v.*
18 *Wichita*, 701 F. Supp. 1530, 1988 U.S. Dist. LEXIS 15015 (D. Kan. Dec. 21, 1988) (Police
19 officers stated a claim under the Fair Labor Standards Act where they alleged that they were not
20 paid for meal periods but were required to remain within a certain area, respond to emergencies
21 and citizen requests, and remain accessible).

22 Notwithstanding any other provision of this order, employees in the health
23 care industry who work shifts in excess of eight (8) total hours in a
24 workday may voluntarily waive their right to one of their two meal
25 periods. In order to be valid, any such waiver must be documented in a
26 written agreement that is voluntarily signed by both the employee and the
27 employer. The employee may revoke the waiver at any time by providing
28 the employer at least one day's written notice. The employee shall be fully
compensated for all working time, including any on-the-job meal period,
while such a waiver is in effect.

Wage Order 5, § 11(D).

59. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of
more than five hours per day without providing the employee with



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1 a meal period of not less than 30 minutes, except that if the total
2 work period per day of the employee is no more than six hours, the
3 meal period may be waived by mutual consent of both the
4 employer and employee.

5 An employer shall not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with
7 a second meal period of not less than 30 minutes, except that if the
8 total hours worked is no more than 12 hours, the second meal
9 period may be waived by mutual consent of the employer and the
10 employee only if the first meal period was not waived.

11 60. In relevant part, Section 11 of the Wage Order states:

12 **Meal Periods**

13 (A) No employer shall employ any person for a work period of
14 more than five (5) hours without a meal period of not less
15 than 30 minutes, except that when a work period of not
16 more than six (6) hours will complete the day's work the
17 meal period may be waived by mutual consent of the
18 employee and the employee. Unless the employee is
19 relieved of all duty during a 30 minute meal period, the
20 meal period shall be considered an 'on duty' meal period
21 and counted as time worked. An 'on duty' meal period shall
22 be permitted only when the nature of the work prevents an
23 employee from being relieved of all duty and when by
24 written agreement between the parties an on-the-job paid
25 meal period is agreed to. The written agreement shall state
26 that the employee may, in writing, revoke the agreement at
27 any time.

28 (B) If an employer fails to provide an employee a meal period
in accordance with the applicable provisions of this Order,
the employer shall pay the employee one (1) hour of pay at
the employee's regular rate of compensation for each work
day that the meal period is not provided.

61. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during
a meal or rest period mandated pursuant to an applicable
statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of



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Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

62. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

63. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

64. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

65. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. The Defendants did not permit Ruiz and the other Aggrieved Employees to take 30-minute off duty meal periods at any time. Though the Defendants represented to Ruiz and the Aggrieved Employees that they would be assigned an average of two jobs per expected eight-hour shift, the Defendants often assigned Ruiz and the Aggrieved Employees anywhere from five to twenty jobs per shift. The Defendants thus forced Ruiz and the other Aggrieved Employees to remain on duty for their meal periods, taking time to eat while driving between job sites if at all. Ruiz and the Aggrieved Employees also often began their off-duty meal breaks well after their fifth hour of work in each shift, based on the timing and workload of their assigned jobs. Because the Defendants managed job assignments for Ruiz and each of the Aggrieved Employees, the Defendants were aware that the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 30-minute off duty meal breaks as



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1 required by California law, and that they were often unable to take any breaks prior to the fifth
2 hour worked. Nonetheless, the Defendants required Ruiz and the Aggrieved Employees to mark
3 on their employee timesheets that they had taken the mandated meal breaks. The Defendants did
4 not pay them for this time worked. Furthermore, Defendants failed to pay premium wages for
5 days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely
meal periods.

6 66. Plaintiff is informed and believes and thereon alleges that, at all relevant times
7 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
8 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
9 meal periods required by California law.

10 **E. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

11 67. In relevant part, California Labor Code § 1198 states:

12 The maximum hours of work and the standard conditions of labor
13 fixed by the commission shall be the maximum hours of work and
14 the standard conditions of labor for employees. The employment
15 of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

16 68. In relevant part, Section 12 of the Wage Order states:

17 **Rest Periods**

18
19 (A) Every employer shall authorize and permit all employees
20 to take rest periods, which insofar as practicable shall be in the
21 middle of each work period. The authorized rest period time shall
be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof.
However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

22
23 (B) If an employer fails to provide an employee a rest period in
24 accordance with the applicable provisions of this Order, the
25 employer shall pay the employee one (1) hour of pay at the
26 employee's regular rate of compensation for each work day that
27 the rest period is not provided.

28 69. In relevant part, California Labor Code § 226.7 states:



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1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
5 and Health Standards Board, or the Division of
6 Occupational Safety and Health.

7 (c) If an employer fails to provide an employee a meal period
8 or rest period in accordance with a state law, including, but
9 not limited to, an applicable statute or applicable
10 regulation, standard, or order of the Industrial Welfare
11 Commission, the Occupational Safety and Health
12 Standards Board, or the Division of Occupational Safety
13 and Health, the employer shall pay the employee one
14 additional hour of pay at the employee's regular rate of
15 compensation for each work day that the meal or rest
16 period is not provided.

17 70. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
18 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
19 period of work, or major fraction thereof.

20 71. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
21 Employees to take all 10-minute rest periods free from any work duties in accordance with the
22 Wage Order.

23 72. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
24 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
25 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
26 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

27 73. At all relevant times, due to high workload and low staffing levels, Defendants
28 failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid,
duty-free rest breaks every four hours worked or major fraction thereof. At all relevant times,
Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-
minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The
Defendants did not permit Ruiz and the other Aggrieved Employees to take 10-minute off duty
rest breaks at any time. Though the Defendants represented to Ruiz and the Aggrieved Employees
that they would be assigned an average of two jobs per expected eight-hour shift, the Defendants



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1 often assigned Ruiz and the Aggrieved Employees anywhere from five to twenty jobs per shift.
2 The Defendants thus forced Ruiz and the other Aggrieved Employees to remain on duty for their
3 rest breaks. Because the Defendants managed job assignments for Ruiz and each of the Aggrieved
4 Employees, the Defendants were aware that the assigned workload rendered Ruiz and the
5 Aggrieved Employees unable to take 10-minute off duty rest breaks as required by California law.
6 Nonetheless, the Defendants required Ruiz and the Aggrieved Employees to mark on their
7 employee timesheets that they had taken the mandated rest breaks. Defendants did not seek an
8 exemption from the rest period protections of the Wage Order from the California Divisions of
9 Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved
10 Employees premium wages on workdays they failed to provide them with 10-minute rest periods
every four hours worked or major fraction thereof.

11 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
14 Employees to take all rest breaks required by California law.

15 **F. FAILURE TO INDEMNIFY**

16 75. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
17 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
18 consequence of the discharge of his or her duties.”

19 76. California Labor Code § 1198 prohibits employers from employing their
employees under conditions prohibited by the Wage Order.

20 77. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
21 to incur certain business expenses in the course of performing their duties. The Defendants
22 required Plaintiff and all of the other Aggrieved Employees to supply mobile phones and telecom
23 services to perform their job duties. However, the Defendants did not provide these items and did
24 not reimburse Plaintiff and the other Aggrieved Employees for these items. The Defendants
25 required Plaintiff and the Aggrieved Employees to monitor mobile phones and communicate with
26 both the Defendants and the clients via text, call, and email, both during their scheduled shifts
27 and while “on call” for several hours after each work day, or completing administrative tasks and
28 client communication while “off the clock.” Although the Defendants provided work phones to
Plaintiff and the other Class Members, the Defendants did not permit work phone use outside of



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1 scheduled shift hours. The Defendants thus expected and were aware that Plaintiff and the
2 Aggrieved Employees used their personal mobile phones and cellular service for work purposes
3 while “off the clock” and “on call.”

4 78. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
6 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
7 incurred during the course of performing their duties.

8 **G. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION**
9 **AGREEMENTS**

10 79. Labor Code section 2751 states:

- 11 (a) Whenever an employer enters into a contract of employment with an
12 employee for services to be rendered within this state and the contemplated
13 method of payment of the employee involves commissions, the contract
14 shall be in writing and shall set forth the method by which the commissions
15 shall be computed and paid.
- 16 (b) The employer shall give a signed copy of the contract to every employee
17 who is a party thereto and shall obtain a signed receipt for the contract from
18 each employee. In the case of a contract that expires and where the parties
19 nevertheless continue to work under the terms of the expired contract, the
20 contract terms are presumed to remain in full force and effect until the
21 contract is superseded or employment is terminated by either party.
- 22 (c) As used in this section, “commissions” has the meaning set forth in Section
23 204.1. For purposes of this section only, “commission” does not include
24 any of the following:
- 25 (1) Short-term productivity bonuses such as are paid to retail clerks.
 - 26 (2) (Temporary, variable incentive payments that increase, but do not
27 decrease, payment under the written contract.
 - 28 (3) Bonus and profit-sharing plans, unless there has been an offer by
the employer to pay a fixed percentage of sales or profits as
compensation for work to be performed.

80. The Defendants purported to pay Ruiz and the Aggrieved Employees
“discretionary” bonuses, labeled as such in both hiring paperwork and on employee wage
statements; the Defendants paid all bonuses separately from the aforementioned hourly/“salary”



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1 payments for regular work duties and issued separate wage statements. Per the offer letters and
2 hiring paperwork provided to Ruiz and the Aggrieved Employees, such bonuses became available
3 after three months of work and were not actually discretionary, as they were calculated using a
4 fixed formula based on a percentage of accounts sold and/or signed on. These bonuses were
5 therefore essentially commissions on sales made by Ruiz and the Aggrieved Employees; however,
6 because sales were neither guaranteed nor required as part of employees' work duties, the
7 commissions could not be included by the Defendants in calculating wage payments to Ruiz and
8 the Aggrieved Employees. The Defendants did not provide written contracts outlining the terms
9 of employees' commission structure, signed by Ruiz and the other Aggrieved Employees, either
10 at hiring or once they became eligible to earn commissions, as required by California law. In fact,
11 the Defendants unilaterally changed the formulas used for calculating individual employees'
12 commission percentages several times without providing written, signed notice of the new
13 structure to Ruiz and the Aggrieved Employees.

13 81. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 and based on the above facts, Defendants maintained a policy and/or practice, or lack thereof,
15 which resulted in Defendants' failure to provide signed and complete commission agreements as
16 required by Labor Code section 2751.

16 82. At all relevant times, the Defendants have failed to provide Ruiz and all of the
17 other Aggrieved Employees with signed commission agreements, including the employee
18 handbook. As a result, the Defendants have violated Labor Code § 2751. Accordingly, Ruiz seeks
19 an award of civil penalties against the Defendants on behalf of himself and all of the other
20 Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee
21 for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved
22 employee per pay period in which subsequent violations of § 2751 occurred (penalties set by
23 Labor Code § 2699(f)(2)).

24 **H. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
25 **STATEMENTS**

25 83. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
26 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
27 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
28 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at



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1 each hourly rate by the employee.

2 84. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
3 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
4 the employer fails to provide accurate and complete information as required by California Labor
5 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
6 alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
14 and address of the legal entity that secured the services of the employer during the pay period;

15 D. The name of the employee and only the last four digits of his or his social
16 security number or an employee identification number other than a social security number; and

17 E. The number of piece-rate units earned and the piece rate.

18 85. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
19 means a reasonable person would be able to readily ascertain the information without reference
20 to other documents or information.

21 86. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages for work they performed off-the-clock
28 after clocking-out (as described above).

87. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
accurate wage statements was knowing and intentional. Defendants had the ability to provide
Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally



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provided wage statements that Defendants knew were not accurate.

88. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

I. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE

89. Labor Code § 246 states

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(h) (effective July 1, 2015). The Defendants failed to provide Ruiz and all of the other Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available. Accordingly, Ruiz seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 246 occurred (penalties set by Labor Code § 2699(f)(2)).

J. FAILURE TO PROVIDE WAGE STATEMENTS WITH REST AND RECOVERY TIME

90. Labor Code section 226.2 states

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:



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...

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

91. The Defendants failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Ruiz now seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

K. UNTIMELY WAGES DURING EMPLOYMENT

92. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if



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hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

93. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

L. UNTIMELY FINAL WAGES

94. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

95. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

96. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.



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1 97. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
2 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
3 willful in that, at all relevant times, Defendants have deliberately maintained policies and
4 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
5 relevant times, they have had the ability to comply with those legal requirements.

6 **M. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

7 98. Labor Code § 1174 states:

8 Every person employing labor in this state shall:

9 ...

10 (c) Keep a record showing the names and addresses of all employees
11 employed and the ages of all minors.

12 (d) Keep, at a central location in the state or at the plants or establishments
13 at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate
15 units earned by and any applicable piece rate paid to, employees
16 employed at the respective plants or establishments. These records shall
17 be kept in accordance with rules established for this purpose by the
18 commission, but in any case shall be kept on file for not less than three
19 years. An employer shall not prohibit an employee from maintaining a
20 personal record of hours worked, or, if paid on a piece-rate basis, piece-
21 rate units earned.

22 99. Labor Code § 1174.5 states:

23 Any person employing labor who willfully fails to maintain the records required
24 by subdivision (c) of Section 1174, or to allow any member of the commission
25 or employees of the division to inspect records pursuant to subdivision (b) of
26 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

27 100. Section 7 of the Wage Order states:

28 (a) Every employer shall keep accurate information with respect to each
employee including the following:

(1) Full name, home address, occupation, and social security
number.

(2) Birth date, if under 18 years, and designation as a minor.



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- 1 (3) Time records showing when the employee begins and ends each
2 work period. Meal periods, split shift intervals and total daily
3 hours worked shall also be recorded. Meal periods during which
4 operations cease and authorized rest periods need not be
5 recorded.
- 6 (4) Total wages paid each payroll period, including value of board,
7 lodging, or other compensation actually furnished to the
8 employee.
- 9 (5) Total hours worked in the payroll period and applicable rates of
10 pay. This information shall be made readily available to the
11 employee upon reasonable request.
- 12 (6) When a piece rate or incentive plan is in operation, piece rates or
13 an explanation of the incentive plan formula shall be provided to
14 employees. An accurate production record shall be maintained by
15 the employer.

16 101. Labor Code § 1198 prohibits employers from employing their employees under
17 conditions prohibited by the Wage Order.

18 102. On information and belief, Defendants have willfully failed to maintain the records
19 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
20 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
21 and the Aggrieved Employees.

22 103. Accordingly, Ruiz seeks an award of civil penalties against the Defendants on
23 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
24 Aggrieved Employee for each violation of Labor Code section 1174 (penalties set by Labor Code
25 section 1174.5); and (2) \$100 for each Aggrieved Employee for each initial violation of Labor
26 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
27 pay period (penalties set by Labor Code section 2699(f)(2)).

28 **N. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE
LABOR CODE**

104. In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision regulating
minimum wages or hours and days of work in any order of the



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Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

105. At all relevant times, Lynn Elizabeth Olavarri (“Olavarri”) and/or Matthew Lara (“Lara”) were employers of Plaintiff and all of the other Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of the Defendants and the other employers identified above. Olavarri and/or Lara directly or indirectly, or through agents or other persons, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Plaintiff seeks an award of civil penalties against Olavarri and/or Lara that is the same as the award of civil penalties against the other Defendants on the same grounds for which Plaintiff seeks civil penalties against the Defendants.

O. CIVIL PENALTIES SOUGHT

106. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

107. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 223, 225.5, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, 1198, 2751, 2802, and related Labor Code statutes.

108. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

109. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants’ violations of California Labor Code §§ 201, 202, 203, 204, 221, 223, 225.5, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, 1198, 2751, 2802, and related Labor Code statutes during the applicable limitations



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period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); Alternatively, one hundred dollars (\$100) for each Aggrieved Employee per pay period; Alternatively, twenty-five dollars (\$25) for each Aggrieved Employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226; and alternatively, fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty amounts established by Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 221, 223, 225.5, 1194, 1198, 2751, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee



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per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

P. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

110. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated January 26, 2026, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated January 26, 2026, is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

111. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

112. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: April 29, 2026

By:



DAVID G. SPIVAK
JULIA R. McCOY
Attorneys for Plaintiff, EDWIN RUIZ,
and all others similarly situated



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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

January 26, 2026

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Edwin Ruiz / Killroy Pest Control, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Edwin Ruiz (hereafter “Ruiz” or “Complainant”) provides notice that Killroy Pest Control, Inc., Lynn Elizabeth Olavarri, Matthew Lara, and related entities (collectively “the Killroy Pest Control Employers” or “the Employers”) violated his rights and those of all other individuals the Killroy Pest Control Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including pest management specialists, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2751, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Ruiz hereby provides this notice to the Labor & Workforce Development Agency and the Killroy Pest Control Employers and their agents and representatives.

At all relevant times, the Killroy Pest Control Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ruiz and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately November 1, 2016, the Killroy Pest Control Employers began to employ Ruiz in Campbell, California in the position of hourly, non-exempt pest management specialist. The Killroy Pest Control Employers continuously employed him in that capacity until on or about September 2, 2025, when his employment ended.

At all relevant times, the Killroy Pest Control Employers issued wages to Ruiz and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis, despite calculating and recording employee hours worked on a biweekly (26 paycheck/year) basis. The Killroy Pest Control Employers paid Ruiz and the Aggrieved Employees by the hour but issued wages in a lump sum, reflected on their wage statements, that the Employers claimed were equivalent to “salary.” At all relevant times, the Killroy Pest Control Employers classified Ruiz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. At all relevant times, the Killroy Pest Control Employers required and expected Ruiz and the other Aggrieved Employees to work “off the clock.” The Killroy Pest Control Employers demanded that Ruiz and the Aggrieved Employees complete administrative tasks, including calling and emailing clients and completing notes on daily jobs, both before and after their scheduled shifts, as well as to remain “on call” during such times in the event that an emergency or rush job arose. The Employers did not pay Ruiz or the Aggrieved Employees for this time worked.

The Killroy Pest Control Employers also hired Ruiz and the Aggrieved Employees at varied hourly rates of pay as non-exempt employees and promised to pay them biweekly (26 paychecks/year). Instead of tracking and compensating actual regular and overtime hours worked, however, the Killroy Pest Control Employers paid Ruiz and the other Aggrieved Employees a base pay per pay period covering ten (10) days of work, eight (8) hours per day calculated as 40 hours per week, for an assumed 80 hours worked, on a semimonthly (24 paychecks/year) basis. When questioned about the practice and policy, the Killroy Pest Control Employers claimed that Ruiz and the Aggrieved Employees were receiving a salary plus a discretionary bonus of a percentage of sales and an incentive bonus, rather than hourly compensation. The Employers claimed that such “salary” was comparable to an hourly rate for purposes of calculating vacation and

sick pay. The Employers did so despite failing to calculate and ensure that the claimed “salary” paid to Ruiz and the Aggrieved Employees reflected the minimum wages, and meal and rest break wages requirements, owed to non-exempt employees under California law, and to Ruiz and the Aggrieved Employees in particular. The Killroy Pest Control Employers’ false recording of meal and rest breaks further pushed the hourly wage paid as a lump sum below the hourly minimum wage owed to Ruiz and the other Aggrieved Employees; because bonuses paid were not guaranteed, such payments failed to raise Ruiz and the Aggrieved Employees’ compensation up to the minimum wage owed.

Furthermore, the Killroy Pest Control Employers required Ruiz and the other Aggrieved Employees to record off-duty meal breaks and rest breaks on employee timesheets/time records, despite the Employers’ awareness that the unreasonable workloads and time constraints assigned prevented Ruiz and the Aggrieved Employees from taking off-duty breaks. The Employers counted each recorded meal and rest break as unpaid, and therefore did not compensate Ruiz and the Aggrieved Employees for their time worked during on-duty breaks.

The Killroy Pest Control Employers agreed in hiring and policy documents to pay Ruiz and the other Aggrieved Employees on a bi-weekly basis (26 paycheck/year), and represented to them that the Employers did so. Instead, the Killroy Pest Control Employers issued wages on a semimonthly basis (24 paychecks/year). In this way, the Killroy Pest Control Employers regularly failed to pay Ruiz and the Aggrieved Employees any minimum, regular, and/or overtime wages for one or more work days per pay period, based on the Employers’ calculated eighty-hour pay period falsely recorded and paid to each employee.

Finally, the Killroy Pest Control Employers expected Ruiz and all of the Aggrieved Employees to work overtime and scheduled Ruiz and the Aggrieved Employees for more jobs per work day than were reasonable to complete within eight hours. However, the Killroy Pest Control Employers often forbade Ruiz and the Aggrieved Employees from recording any of their overtime hours, preventing them from receiving any remuneration at all for the hours worked.

In each of the above ways, the Killroy Pest Control Employers did not pay Ruiz and all of the other Aggrieved Employees the minimum and/or regular wages mandated by California law.

The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Killroy Pest Control Employers expected Ruiz and all of the Aggrieved Employees to work more than eight hours in a day and more than 40 hours in a week. The Employers did so by scheduling Ruiz and the Aggrieved Employees for more jobs per work day than were reasonable to complete within eight hours, requiring Ruiz and the Aggrieved Employees to complete certain administrative tasks “off the clock,” expecting them to remain “on call” at certain times, and paying them a base pay described as a “salary” regardless of actual hours worked. However, the Killroy Pest Control Employers forbade Ruiz and the Aggrieved Employees from recording any of their overtime hours, preventing them from receiving remuneration for the hours worked. Furthermore, at all relevant times during their work for the Killroy Pest Control Employers, Ruiz and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages, bonuses/commission, and other non-discretionary compensation during pay periods in which they worked hours qualifying for overtime premium pay rates, but were not compensated for such work at the appropriate rates. Because Ruiz and the Aggrieved Employees worked overtime hours, the Killroy Pest Control Employers owed them overtime premium wages of time and one half their regular rates of pay for their work described above. The Killroy Pest Control Employers did not pay overtime premium rates to Ruiz and the Aggrieved Employees for all work on which the Employers were required to pay such premium rates.

The Killroy Pest Control Employers promised in offer letters and in other comparable onboarding and hiring paperwork to pay Ruiz and the Aggrieved Employees specific hourly rates of pay above the mandated minimum wage for regular and overtime hours worked, as well as “discretionary” bonuses of a calculated percentage of *non-guaranteed* sales in addition to required job duties, on a biweekly (26 paychecks/year) basis. Instead, the Killroy Pest Employers paid Ruiz and the other Aggrieved Employees a “salary” base pay per pay period, based on an assumed ten (10) eight hour shifts with unpaid meal and rest breaks, which the Employers falsely recorded in lieu of accurate time tracking, on a semimonthly (24 paychecks/year). This base pay, when divided by the

assumed hours worked less the unpaid meal and rest breaks (which Ruiz and the Aggrieved Employees did not receive), equaled less than the applicable minimum wage and significantly less than the rates of pay stated in Ruiz and the Aggrieved Employees' hiring paperwork. In this manner, the Killroy Pest Control Employers regularly secretly paid Ruiz and the other Aggrieved Employees lower wages than the minimum and contractually-mandated wages, while purporting to pay the wages designated by both statute and contract.

At all relevant times, the Killroy Pest Control Employers failed to provide Ruiz and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Killroy Pest Control Employers did not permit Ruiz and the other Aggrieved Employees to take 30-minute off duty meal periods at any time. The Killroy Pest Control Employers represented to Ruiz and the Aggrieved Employees that they would be assigned an average of ten jobs per expected eight-hour shift at a bare minimum, despite knowing that the assignments were more than Ruiz and the Aggrieved Employees could reasonably complete in one shift and forbidding Ruiz and the Aggrieved Employees from recording overtime. The Killroy Pest Control Employers thus forced Ruiz and the other Aggrieved Employees to remain on duty for their meal periods, taking time to eat while driving between job sites if at all. Ruiz and the Aggrieved Employees also often began their off-duty meal breaks well after their fifth hour of work in each shift, based on the timing and workload of their assigned jobs. Because the Killroy Pest Control Employers managed job assignments and reviewed timesheets for Ruiz and each of the Aggrieved Employees, the Killroy Pest Control Employers were aware that the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 30-minute off duty meal breaks as required by California law, and that they were often unable to take any breaks prior to the fifth hour worked. Nonetheless, the Killroy Pest Control Employers required Ruiz and the Aggrieved Employees to mark on their employee timesheets that they had taken the mandated meal breaks. The Employers did not pay them for this time worked. The Killroy Pest Control Employers also failed to pay premium wages for days on which they failed to provide Ruiz and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Killroy Pest Control Employers failed to authorize and permit Ruiz and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Killroy Pest Control Employers did not permit Ruiz and the other Aggrieved Employees to take 10-minute

off duty rest breaks at any time. The Killroy Pest Control Employers represented to Ruiz and the Aggrieved Employees that they would be assigned an average of ten jobs per expected eight-hour shift at a bare minimum, despite knowing that the assignments were more than Ruiz and the Aggrieved Employees could reasonably complete in one shift and forbidding Ruiz and the Aggrieved Employees from recording overtime. The Killroy Pest Control Employers thus prevented Ruiz and the other Aggrieved Employees from taking any rest breaks. Because the Killroy Pest Control Employers managed job assignments and reviewed timesheets for Ruiz and each of the Aggrieved Employees, the Killroy Pest Control Employers were aware that the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 10-minute off duty rest breaks as required by California law. Nonetheless, the Killroy Pest Control Employers required Ruiz and the Aggrieved Employees to mark on their employee timesheets that they had taken the mandated rest breaks. The Employers did not pay them for this time worked. The Killroy Pest Control Employers also failed to pay premium wages for days on which they failed to authorize and permit Ruiz and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Killroy Pest Control Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Killroy Pest Control Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom to perform their job duties. However, the Killroy Pest Control Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Killroy Pest Control Employers required Ruiz and the Aggrieved Employees to monitor mobile phones and communicate with both the Employers and the clients via text, call, and email, both during their scheduled shifts and while “on call” for several hours after each work day, or completing administrative tasks and client communication while “off the clock.” Although the Killroy Pest Control Employers provided work phones to Ruiz and the other Aggrieved Employees, the Employers did not permit work phone use outside of scheduled shift hours. The Killroy Pest Control Employers thus expected and were aware that Ruiz and the Aggrieved Employees used their personal mobile phones and cellular service for work purposes while “off the clock” and “on call.”

The Killroy Pest Control Employers unlawfully deducted wages belonging to Ruiz and all of the other Aggrieved Employees. The Killroy Pest Control Employers regularly deducted prepaid portions of bonuses, labeled “incentives,” and marked such deductions on the paystubs provided to Ruiz and the Aggrieved Employees.

The Killroy Pest Control Employers purported to pay Ruiz and the Aggrieved Employees “discretionary” bonuses, labeled as such in both hiring paperwork and on employee wage statements; the Employers paid all bonuses separately from the aforementioned hourly/“salary” payments for regular work duties and issued separate wage statements. Per the offer letters and hiring paperwork provided to Ruiz and the Aggrieved Employees, such bonuses became available after three months of work and were not actually discretionary, as they were calculated using a fixed formula based on a percentage of accounts sold and/or signed on. These bonuses were therefore essentially commissions on sales made by Ruiz and the Aggrieved Employees; however, because sales were neither guaranteed nor required as part of employees’ work duties, the commissions could not be included by the Killroy Pest Control Employers in calculating wage payments to Ruiz and the Aggrieved Employees. The Killroy Pest Control Employers did not provide written contracts outlining the terms of employees’ commission structure, signed by Ruiz and the other Aggrieved Employees, either at hiring or once they became eligible to earn commissions, as required by California law. In fact, the Killroy Pest Control Employers unilaterally changed the formulas used for calculating individual employees’ commission percentages several times without providing written, signed notice of the new structure to Ruiz and the Aggrieved Employees. In this way, at all relevant times, the Killroy Pest Control Employers failed to provide signed and complete commission agreements.

At all relevant times, the Killroy Pest Control Employers failed to issue to Ruiz and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Killroy Pest Control Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, *all hourly rates, all hours worked at each rate of pay*, any and all agreed-upon non-discretionary bonuses/commission, and other required information. The Killroy Pest Control Employers classified Ruiz and the other Aggrieved Employees as non-exempt, hourly employees. However, the Killroy Pest Control Employers failed to include the number of hours worked and the applicable rates of pay on Ruiz and the Aggrieved Employees’ wage statements. Instead, the Employers recorded only the sum total paid for each pay period and paid bonuses and incentives on separate, non-itemized wage statements.

The Killroy Pest Control Employers also failed to timely pay Ruiz and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Killroy Pest Control Employers failed to maintain accurate employee records of Ruiz and all of the other Aggrieved Employees.

For the reasons stated herein, Ruiz alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Killroy Pest Control Employers failed to pay Ruiz and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Killroy Pest Control Employers secretly paid Ruiz and all of the other Aggrieved Employees lower wages than required by statute and/or contract;
- (c) The Killroy Pest Control Employers failed to provide Ruiz and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The Killroy Pest Control Employers failed to authorize and permit Ruiz and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees at one hour's pay for each day in which the Killroy Pest Control Employers failed to provide them with one or more meal periods as required by law;
- (f) The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees at one hour's pay for each day in which the Killroy Pest Control Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (g) The Killroy Pest Control Employers failed to indemnify Ruiz and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The Killroy Pest Control Employers unlawfully deducted wages belonging to Ruiz and all of the other Aggrieved Employees;
- (i) The Killroy Pest Control Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees;
- (j) The Killroy Pest Control Employers knowingly and intentionally failed to provide Ruiz and all of the other Aggrieved Employees with accurate wage statements, including the intentional omission of any applicable rates of pay and hours worked at each rate of pay;
- (k) The Killroy Pest Control Employers willfully failed to timely pay Ruiz and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Killroy Pest Control Employers and when their employment ended;
- (l) The Killroy Pest Control Employers failed to maintain accurate employment records pertaining to Ruiz and all of the other Aggrieved Employees.

Accordingly, Ruiz now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Killroy Pest Control Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, **or maintenance services whether operated as a primary business or when**

incidental to other operations in an establishment not covered by an industry order of the Commission, **and includes, but is not limited to** the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) **Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and**
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(R), emphasis added. At all relevant times during the applicable limitations period, the Killroy Pest Control Employers, Ruiz, and all of the Aggrieved Employees were covered by the Wage Order because the Killroy Pest Control Employers operated, and Ruiz, and all of the Aggrieved Employees, worked for a business operation providing pest control and maintenance services for one or more apartments, houses, offices, and/or loft buildings. Accordingly, Ruiz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 221, 223, 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

Labor Code section 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

Labor Code section 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

In relevant part, Labor Code section 2810.5 states:

(a)(1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times, the Killroy Pest Control Employers required and expected Ruiz and the other Aggrieved Employees to work "off the clock." The Killroy Pest Control Employers demanded that Ruiz and the Aggrieved Employees complete administrative tasks, including calling and emailing clients and completing notes on daily jobs, both before and after their scheduled shifts, as well as to remain "on call" during such times in the event that an emergency or rush job arose. The Employers did not pay Ruiz or the Aggrieved Employees for this time worked.

The Killroy Pest Control Employers also hired Ruiz and the Aggrieved Employees at various hourly rates of pay as non-exempt employees. Instead of tracking and compensating actual regular and overtime hours worked, however, the Killroy Pest Control Employers paid Ruiz and the other Aggrieved Employees a base pay per pay period covering ten (10) days of work, eight (8) hours per day calculated as 40 hours per week, for an assumed 80 hours worked. When questioned about the practice and policy, the Killroy Pest Control Employers claimed that Ruiz and the Aggrieved Employees were receiving a salary, plus a discretionary non-guaranteed bonus of a percentage of sales and an incentive bonus. rather than hourly compensation. The Employers claimed that such "salary" was comparable to an hourly rate for purposes of calculating vacation and sick pay. The Employers did so despite failing to calculate

and ensure that the claimed “salary” paid to Ruiz and the Aggrieved Employees reflected the minimum wages, and meal and rest break wages requirements, owed to non-exempt employees under California law, and to Ruiz and the Aggrieved Employees in particular. The Killroy Pest Control Employers’ false recording of meal and rest breaks further pushed the hourly wage paid as a lump sum below the hourly minimum wage owed to Ruiz and the other Aggrieved Employees; because bonuses paid were not guaranteed, such payments failed to raise Ruiz and the Aggrieved Employees’ compensation up to the minimum wage owed.

Furthermore, the Killroy Pest Control Employers required Ruiz and the other Aggrieved Employees to record off-duty meal breaks and rest breaks on employee timesheets/time records, despite the Employers’ awareness that the unreasonable workloads and time constraints assigned prevented Ruiz and the Aggrieved Employees from taking off-duty breaks. The Employers counted each recorded meal and rest break as unpaid, and therefore did not compensate Ruiz and the Aggrieved Employees for their time worked during on-duty breaks.

The Killroy Pest Control Employers agreed in hiring and policy documents to pay Ruiz and the other Aggrieved Employees on a bi-weekly basis (26 paycheck/year), and represented to them that the Employers did so. Instead, the Killroy Pest Control Employers issued wages on a semimonthly basis (24 paychecks/year). In this way, the Killroy Pest Control Employers regularly failed to pay Ruiz and the Aggrieved Employees any minimum, regular, and/or overtime wages for one or more work days per pay period, based on the Employers’ calculated eighty-hour pay period falsely recorded and paid to each employee.

The Killroy Pest Control Employers expected Ruiz and all of the Aggrieved Employees to work overtime and scheduled Ruiz and the Aggrieved Employees for more jobs per work day than were reasonable to complete within eight hours. However, the Killroy Pest Control Employers often forbade Ruiz and the Aggrieved Employees from recording any of their overtime hours, preventing them from receiving any remuneration at all for the hours worked.

The Killroy Pest Control Employers also failed to compensate Ruiz and all of the other Aggrieved Employees at the correct rate of pay of time and one half (1.5x) the regular rate of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Killroy Pest Control Employers

expected Ruiz and all of the Aggrieved Employees to work more than eight hours in a day and more than 40 hours in a week. The Employers did so by scheduling Ruiz and the Aggrieved Employees for more jobs per work day than were reasonable to complete within eight hours, requiring Ruiz and the Aggrieved Employees to complete certain administrative tasks “off the clock,” expecting them to remain “on call” at certain times, and paying them a base pay described as a “salary” regardless of actual hours worked. However, the Killroy Pest Control Employers often forbade Ruiz and the Aggrieved Employees from recording any of their overtime hours, preventing them from receiving remuneration for the hours worked. Furthermore, at all relevant times during their work for the Killroy Pest Control Employers, Ruiz and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages, bonuses/commission, and other non-discretionary compensation during pay periods in which they worked hours qualifying for overtime premium pay rates, but were not compensated for such work at the appropriate rates. Because Ruiz and the Aggrieved Employees worked overtime hours, the Killroy Pest Control Employers owed them overtime premium wages of time and one half their regular rates of pay for their work described above. The Killroy Pest Control Employers did not pay overtime premium rates to Ruiz and the Aggrieved Employees for all work on which the Employers were required to pay such premium rates.

The Killroy Pest Control Employers promised in offer letters and in other comparable onboarding and hiring paperwork to pay Ruiz and the Aggrieved Employees specific hourly rates of pay above the mandated minimum wage for regular and overtime hours worked, as well as “discretionary” bonuses of a calculated percentage of *non-guaranteed* sales in addition to required job duties, on a biweekly (26 paychecks/year) basis. Such promises were purported to constitute notice under Labor Code § 2810.5 and created a contractual obligation for the Killroy Pest Control Employers to compensate Ruiz and the Aggrieved Employees at the rates listed. Instead, the Killroy Pest Employers paid Ruiz and the other Aggrieved Employees a “salary” base pay per pay period, based on an assumed ten (10) eight hour shifts with unpaid meal and rest breaks, which the Employers falsely recorded in lieu of accurate time tracking, on a semimonthly (24 paychecks/year). This base pay, when divided by the assumed hours worked less the unpaid meal and rest breaks (which Ruiz and the Aggrieved Employees did not receive), equaled less than the applicable minimum wage and significantly less than the rates of pay stated in Ruiz and the Aggrieved Employees’ hiring paperwork. In this manner, the Killroy Pest Control Employers regularly secretly paid Ruiz and the other Aggrieved

Employees lower wages than the minimum and contractually-mandated wages, while purporting to pay the wages designated by both statute and contract.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Killroy Pest Control Employers, Ruiz and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages, and bonuses/commission based on percentages of sales during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Killroy Pest Control Employers failed to pay to Ruiz and all of the other Aggrieved Employees rest period premium wages, meal period premium wages, and bonus/commission overtime premium pay on such rest period premium wages, meal period premium wages, bonuses/commission, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked, including, *but not limited to* minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Ruiz now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for

each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1);

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
5. All other available civil penalties for each violation of other applicable and cited Labor Code sections.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate

of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Killroy Pest Control Employers failed to provide Ruiz and all of the other Aggrieved Employees with all timely meal periods. The Killroy Pest Control Employers denied Ruiz and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Killroy Pest Control Employers did not permit Ruiz and the other Aggrieved Employees to take 30-minute off duty meal periods at any time. The Killroy Pest Control Employers represented to Ruiz and the Aggrieved Employees that they would be assigned an average of ten jobs per expected eight-hour shift at a bare minimum, despite knowing that the assignments were more than Ruiz and the Aggrieved Employees could reasonably complete in one shift and forbidding Ruiz and the Aggrieved Employees from recording overtime. The Killroy Pest Control Employers thus forced Ruiz and the other Aggrieved Employees to remain on duty for their meal periods, taking time to eat while driving between job sites if at all. Ruiz and the Aggrieved Employees also often began their off-duty meal breaks well after their fifth hour of work in each shift, based on the timing and workload of their assigned jobs. Because the Killroy Pest Control Employers managed job assignments and reviewed timesheets for Ruiz and each of the Aggrieved Employees, the Killroy Pest Control Employers were aware that the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 30-minute off duty meal breaks as required by California law, and that they were often unable to take any breaks prior to the fifth hour worked. Nonetheless, the Killroy Pest Control Employers required that Ruiz and the Aggrieved Employees mark on their employee timesheets that they had taken the mandated meal breaks. The Employers did not pay them for this time worked. Furthermore, the Killroy Pest Control Employers failed to pay premium wages for days on which they failed to provide Ruiz and all of the other Aggrieved Employees with timely meal periods. Accordingly, Ruiz now seeks civil penalties for these Labor Code violations that the Killroy Pest Control Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent

violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Killroy Pest Control Employers failed to authorize and permit Ruiz and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Killroy Pest Control Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Killroy Pest Control Employers did not permit Ruiz and the other Aggrieved Employees to take 10-minute off duty rest breaks at any time. The Killroy Pest Control Employers represented to Ruiz and the Aggrieved Employees that they would be assigned an average of ten jobs per expected eight-hour shift at a bare minimum, despite knowing that the assignments were more than Ruiz and the Aggrieved Employees could reasonably complete in one shift and forbidding Ruiz and the Aggrieved Employees from recording overtime. The Killroy Pest Control Employers thus prevented Ruiz and the other Aggrieved Employees from taking any rest breaks. Because the Killroy Pest Control Employers managed job assignments and reviewed timesheets for Ruiz and each of the Aggrieved

Employees, the Killroy Pest Control Employers were aware that the assigned workload rendered Ruiz and the Aggrieved Employees unable to take 10-minute off duty rest breaks as required by California law. Nonetheless, the Killroy Pest Control Employers required Ruiz and the Aggrieved Employees to mark on their employee timesheets that they had taken the mandated rest breaks. The Employers did not pay them for this time worked. Moreover, the Killroy Pest Control Employers failed to pay Ruiz and all of the other Aggrieved Employees premium wages on workdays the Killroy Pest Control Employers failed to provide Ruiz and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Ruiz now seeks civil penalties for these Labor Code violations that the Killroy Pest Control Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired

contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

The Killroy Pest Control Employers purported to pay Ruiz and the Aggrieved Employees “discretionary” bonuses, labeled as such in both hiring paperwork and on employee wage statements; the Employers paid all bonuses separately from the aforementioned hourly/“salary” payments for regular work duties and issued separate wage statements. Per the offer letters and hiring paperwork provided to Ruiz and the Aggrieved Employees, such bonuses became available after three months of work and were not actually discretionary, as they were calculated using a fixed formula based on a percentage of accounts sold and/or signed on. These bonuses were therefore essentially commissions on sales made by Ruiz and the Aggrieved Employees; however, because sales were neither guaranteed nor required as part of employees’ work duties, the commissions could not be included by the Killroy Pest Control Employers in calculating wage payments to Ruiz and the Aggrieved Employees. The Killroy Pest Control Employers did not provide written contracts outlining the terms of employees’ commission structure, signed by Ruiz and the other Aggrieved Employees, either at hiring or once they became eligible to earn commissions, as required by California law. In fact, the Killroy Pest Control Employers unilaterally changed the formulas used for calculating individual employees’ commission percentages several times without providing written, signed notice of the new structure to Ruiz and the Aggrieved Employees. In this way, at all relevant times, the Killroy Pest Control Employers failed

to provide signed and complete commission agreements as required by Labor Code section 2751.

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Killroy Pest Control Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Killroy Pest Control Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones and telecom services to perform their job duties. However, the Killroy Pest Control Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Killroy Pest Control Employers required Ruiz and the Aggrieved Employees to monitor mobile phones and communicate with both the Employers and the clients

via text, call, and email, both during their scheduled shifts and while “on call” for several hours after each work day, or completing administrative tasks and client communication while “off the clock.” Although the Killroy Pest Control Employers provided work phones to Ruiz and the other Aggrieved Employees, the Employers did not permit work phone use outside of scheduled shift hours. The Killroy Pest Control Employers thus expected and were aware that Ruiz and the Aggrieved Employees used their personal mobile phones and cellular service for work purposes while “off the clock” and “on call.” Accordingly, Ruiz seeks civil penalties for these Labor Code violations that the Killroy Pest Control Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Killroy Pest Control Employers deducted wages from the wages earned by Ruiz and all of the other Aggrieved Employees for in violation of Labor Code § 221. The Killroy Pest Control Employers regularly deducted prepaid portions of bonuses, labeled “incentives,” and marked such deductions on the paystubs provided to Ruiz and the Aggrieved Employees. Accordingly, Ruiz seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Killroy Pest Control Employers violated Labor Code section 226 because they did not properly and

accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Killroy Pest Control Employers failed to state in the wage statements they issued to Ruiz and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Killroy Pest Control Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, *all hourly rates, all hours work at each rate of pay*, any and all agreed-upon non-discretionary bonuses/commission, and other required information. The Killroy Pest Control Employers classified Ruiz and the other Aggrieved Employees as non-exempt, hourly employees. However, the Killroy Pest Control Employers failed to include the number of hours worked and the applicable rates of pay on Ruiz and the Aggrieved Employees' wage statements. Instead, the Employers recorded only the sum total paid for each pay period and paid discretionary bonuses and incentives recorded on separate, non-itemized wage statements.

Labor Code § 2699(f)(2)(A) states:

- (i) If, at the time of the alleged violation, the person employs one or more employees, and the alleged violation is a violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226, the only civil penalty applicable under this part is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226 [failure to state the name and address of the legal entity that is the employer], the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer. This subdivision does not apply if the

employer has failed to provide an itemized payroll statement during any of the pay periods at issue.

- (ii) The civil penalty is fifty (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Accordingly, Ruiz seeks civil penalties for the Labor Code violations that the Killroy Pest Control Employers have committed against Ruiz and all of the other Aggrieved Employees as follows:

- (1) \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3);
- (2) Alternatively, one hundred dollars (\$100) for each aggrieved employee per pay period;
- (3) Alternatively, twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226; and
- (4) Alternatively, fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during

which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, correctly-calculated non-discretionary bonuses/commission, and other compensation, at the intervals stated above. As a result, the Killroy Pest Control Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Ruiz now seeks civil penalties for the Labor Code violations that the Killroy Pest Control Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from

the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Killroy Pest Control Employers failed to pay Ruiz and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ruiz, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, correctly-calculated non-discretionary bonuses/commission, and other compensation. By failing to pay Ruiz and all of the other Aggrieved Employees as set forth above at the end of employment, the Killroy Pest Control Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Ruiz seeks civil penalties from the Killroy Pest Control Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods

during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Killroy Pest Control Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all hourly rates, all hours work at each rate of pay, any and all correctly-calculated non-discretionary bonuses/commission, and related compensation. As a result, the Killroy Pest Control Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Ruiz and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Ruiz seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Lynn Elizabeth Olavarri and/or Matthew Lara were employers of Ruiz and all of the other Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of the Killroy Pest Control Employers and the other employers identified above. Lynn Elizabeth Olavarri and/or Matthew Lara directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Ruiz seeks the same civil penalties against Lynn Elizabeth Olavarri and Matthew Lara on the same grounds for which he seeks civil penalties against the Killroy Pest Control Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Edwin Ruiz will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

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Re: Edwin Ruiz
January 26, 2026
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formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Edwin Ruiz
Walter L. Haines, Esq.

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