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on behalf of himself and all others similarly situated

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

ERICK F. HARMON, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

CARRINGTON MORTGAGE SERVICES,
LLC, a Delaware limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2023-01339188-CU-OE-CJC

CLASS ACTION

Assigned for All Purposes To:
Hon. John Gastelum
Dept.: C11

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break Liability under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: July 27, 2023

1 Plaintiff ERICK F. HARMON (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly employees employed by Defendants in California during the
3 relevant period (collectively, “Employees”; individually, “Employee”) complains of Defendants as
4 follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants CARRINGTON
9 MORTGAGE SERVICES, LLC, and DOES 1 through 50 (all defendants being collectively referred
10 to herein as “Defendants”). Plaintiff alleges that Defendants violated various provisions of the
11 California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
12 California Business & Professions Code, and seeks redress for these violations.

13 2. Plaintiff worked as a negotiator and in positions related to mortgage generation and
14 servicing, including in the Short Sales Department assisting third parties with short sales and
15 related services. Plaintiff worked with co-workers in mortgage and title related positions at
16 Defendants’ facilities in Anaheim, and Defendants operated other offices and facilities in
17 California, including in Aliso Viejo in Orange County, California. Plaintiff worked at Defendants’
18 behest without being paid all wages due and without being provided all required breaks. More
19 specifically, Plaintiff and the other similarly situated Class members were employed by
20 Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same
21 policies and practices (3) and endured similar violations at the hands of Defendants as the other
22 Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
24 and failed to record accurate time worked by these Employees, failed to pay them at the
25 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
26 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
27 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
28 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain

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

4 4. Defendant CARRINGTON MORTGAGE SERVICES, LLC is a Delaware limited
5 liability company that lists its headquarters and principal California office in Anaheim, California.
6 It lists its type of business as "Resid. Mortgage Lender-Broker & Servicer" and explains on its
7 website that it is a fully integrated mortgage company with lending and servicing operations.
8 Additionally, through our affiliate companies Vylla Home, Vylla Title, and Vylla Escrow, the
9 Carrington family of companies provide all aspects of homeownership under one roof."
10 CARRINGTON MORTGAGE SERVICES, LLC is a subsidiary of Carrington Holding Company,
11 LLC, which upon information and belief integrates these title and mortgage related entities under
12 its umbrella. Carrington Mortgage Services is listed as the employer on wage statements issued to
13 Plaintiff, with an Aliso Viejo, California address, and upon information and belief the other Class
14 members.

15 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
17 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
18 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
19 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
20 obligations and liabilities giving rise to this lawsuit occurred, at least in large part in Orange
21 County where Defendant operates and maintains offices, and Defendants have operated in Orange
22 County where Plaintiff and the other Class members were employed.

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

1 this Complaint to reflect the true names and capacities of the Defendants designated herein as
2 Does 1 through 50 when their identities become known.

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

14 **FACTUAL BACKGROUND**

15 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
16 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
17 Commission ("IWC"). During the period of four years prior to the filing of this action through its
18 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
19 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also
20 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,
21 including by rounding and time shaving and requiring off the clock work, failed to provide meal
22 and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all
23 in violation of various provisions of the California Labor Code and applicable paragraphs of the
24 IWC Wage Orders.

25 9. During the course of Plaintiff and the Class members' employment with
26 Defendants, they were not paid all wages they were owed, including for all work performed
27 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
28 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.

1 Upon information and belief, Defendants employ other non-exempt, hourly employees at
2 Defendants' facilities and offices in California.

3 10. Plaintiff was generally scheduled to work a nine-hour shift on weekdays from 8:00
4 a.m. through 5:00 p.m., which included an automatically deducted meal period without pay, and
5 he would work overtime when approved. On those instances when Plaintiff's overtime hours,
6 combined with the off the clock hours, extended Plaintiff's work shifts past ten hours, Defendants
7 did not schedule or attempt to provide a second meal period or a third rest break. On some
8 Saturdays Plaintiff was also required to report to Defendants' offices to catch up on work and
9 perform other duties required by Defendants' managers. Plaintiff was not permitted to clock in
10 for these hours worked and Defendants thus compelled him to endure further off the clock work.

11 11. Plaintiff was expected to arrive at the company offices before his scheduled shift
12 start time so that he could pass through security screening at the building's main entrance.
13 Plaintiff would scan his badge and walk through a metal detector and undergo any necessary bag
14 check and other screening. When necessary, Employees would undergo temperature screening at
15 this stage of the entrance process. Plaintiff would then walk to his assigned area in Defendants'
16 offices, get his workstation organized for the day, and then would wait while his computer booted
17 up so he could access the internet to then log into the company website and clock in for his shift.
18 This entire process took at least five minutes and often longer before his time was being counted
19 by Defendants as hours worked.

20 12. During his work shift, Plaintiff would respond to customer inquiries and send and
21 respond to e-mails and messages and would then work to try to ensure phone coverage so he
22 could take his break. Plaintiff would clock out for his meal period at his computer and then back
23 in after his meal period ended, and he would then work through the end of his shift and clock out.
24 However, Defendants also required Plaintiff and the Class members to clock out at the start of
25 their rest breaks and then back in at its completion. Defendants followed this practice, upon
26 information and belief, to ensure Employees were not taking breaks that were too long. The
27 added requirements of clocking in and out for rest periods, and being required to pass through
28 security screening if they wanted to leave and return, reduced the time they were afforded for

1 their rest break and impermissibly shortened them.

2 13. To leave Defendants' building at any time during a rest break or meal period,
3 Plaintiff would have to repeat the screening procedures and process to exit the facilities and then
4 go through it again when returning from break. The time it took to complete these screening
5 processes resulted in unlawfully shortened breaks. In each instance to leave and reenter the
6 building through security, Plaintiff and the Class members were required to scan their badges, but
7 they were not required to do so at the end of their work shifts. In contrast, Defendants'
8 timekeeping system relied upon employees logging into the company website on their computers
9 and entering shift and meal period start and end times.

10 14. Therefore, despite having the capability to record accurate hours worked under
11 Defendants' control as evidenced by the security screening badge scans, Defendants only utilized
12 timekeeping punch entries recorded in the company computers and website by the Employees. As
13 a result, when Plaintiff completed his work shift he would clock out in Defendants' systems and
14 wait for his computer and system to shut down and then walk through Defendants' facilities and
15 through the screening area to leave, all while off the clock. In other instances, Plaintiff was
16 required by Defendants' management to clock out for his work shift and continue working to
17 complete necessary duties for the day or to address customer concerns or other issues.

18 15. Given the Employee turnover, it was difficult for Plaintiff and the Class members
19 to complete all their required outstanding tasks for their ever-expanding portfolio of sales and
20 related loans. However, Defendants would expect them to do more and more without working too
21 much overtime that Defendants would not approve. Given these production and scheduling
22 demands placed upon them, and the demands and schedules of customers for follow up calls after
23 hours, Plaintiff and the Class members were compelled to both work substantial hours off the
24 clock and to work through any breaks they were able to attempt to take. This substantial off the
25 clock work, in combination with rounding down of timekeeping entries to the Employees'
26 detriment and Defendants' failure to pay meal or rest break premiums, resulted in systematic
27 underpayment of wages to Plaintiff and the Class members. Also as further addressed below,
28 Defendants unlawfully combined meal periods with rest breaks and then deducted time from

1 hours worked for the combined break. Under the Labor Code and Wage Orders, rest break time
2 must be off duty but also must be compensated. Defendants thus unlawfully deducted at least 10
3 minutes, and as many as 30 minutes, from the hours worked by Plaintiff and the Class members
4 for time that should instead have been paid at regular hourly and overtime rates.

5 16. Additionally, upon information and belief, Defendants paid Plaintiffs' and the
6 Class members other forms of remuneration above and beyond their hourly rates, including
7 performance-based bonuses. However, Defendants' failed to include these additional forms of
8 remuneration in the regular rate used to calculate and pay overtime, if and when Defendants did
9 pay for it. Also, to the extent Defendants ever paid any meal period or rest break premium wages
10 to Plaintiff and the Class members, upon information and belief they did so without including
11 these additional forms of remuneration in the regular rate used to pay them.

12 17. Plaintiff was therefore not paid for all his hours worked at the required minimum,
13 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
14 work off the clock and without pay and by unlawful rounding of hours, and Defendants thus also
15 failed to keep required records of hours worked. Defendants also failed to pay Plaintiff at the
16 required overtime rates for all hours over eight in a shift, or over forty in a work week. With work
17 shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in
18 Plaintiff and the Class members working past eight hours on a shift, which required that they be
19 paid at the correct overtime rate of 1.5 times their regular rate.

20 18. Defendants thus systematically underpaid Plaintiff and the Class members by
21 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
22 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
23 information and belief, the Class members were bound by similar scheduling and work policies
24 and endured similar violations at Defendants' hands as Plaintiff.

25 19. Defendants have either failed to maintain timekeeping records for Plaintiff that
26 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
27 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
28 declined to produce them to Plaintiff in response to a timely and lawful records request. By

1 failing to pay for all hours worked, and by rounding regular hours to the substantial detriment of
2 the Class members to conform generally to scheduled shift times, and by failing to record
3 accurate meal period beginning and ending times, Defendants have committed knowing and
4 intentional ongoing violations of the record keeping requirements under the Labor Code,
5 including section 1174. Additionally, to the extent Defendants paid overtime, it was underpaid as
6 addressed above or Defendants failed to include all forms of remuneration in the regular rate used
7 to calculate and pay overtime wages, thus resulting in further underpayment of wages earned by
8 Plaintiff and the Class members.

9 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
10 and the Class members is and has been a direct consequence of Defendants' unlawful
11 compensation policies and practices, which upon information and belief applied uniformly to the
12 Class members working at Defendants' offices and facilities. As a result of the above-described
13 unlawful requirements to work off the clock and unlawful rounding, the failure to accurately
14 record all hours worked and pay wages at the correct rates, and the other wage violations they
15 endured at Defendants' hands, Plaintiff and the Class members were not properly paid all wages
16 earned and all wages owed to them by Defendants, including when working more than eight
17 hours in any given day and/or more than forty hours in any given week.

18 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
19 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
20 hours worked and failing to pay minimum wages for all time worked, as required by California
21 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
22 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
23 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
24 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
25 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

26 22. Defendants also failed to provide Plaintiff and the Class members with their
27 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
28 eight hours. The above described off the clock work contributed to Defendants' common policy

1 of failing to provide lawful meal periods to Plaintiff and the Class members, as required under the
2 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically
3 failed to authorize and permit Plaintiff and the employee Class Members to take all required 10-
4 minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage
5 Order(s).

6 23. Plaintiff and the Class members generally worked shifts that entitled them to
7 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
8 required meal periods and rest breaks to them. Defendants' uniformly applied policies and
9 practices systematically failed to provide required duty-free meal periods to Plaintiff and the
10 Class members. Instead, Plaintiff and the Class members were expected to continue working
11 throughout their shifts and were often unable to take full, timely, duty-free 30-minute meal
12 periods. On the occasions when they were permitted to take a meal break, it was often well after
13 the fifth hour of work from the shift start time. Given work demands and management pressure,
14 meal periods were often provided for shorter duration and were after five hours into a work shift
15 or were otherwise shortened unlawfully.

16 24. Defendants generally required Plaintiff to take his meal break between noon and
17 1:00 p.m., which was close to five hours into the shift. However, there were many occasions
18 when Plaintiff was required to perform work related tasks while on any kind of break, or to
19 postpone taking one until he completed the required tasks. This resulted in those instances in
20 untimely meal periods provided after five hours into a work shift. Upon information and belief,
21 the Class members endured similar meal period violations at Defendants' hands. On the
22 occasions when Plaintiff and the Class members worked over ten hours on a shift, Defendants
23 failed to provide them with a second uninterrupted and duty-free and timely meal period. Upon
24 information and belief, Defendants also unilaterally determined to combine the single meal period
25 with a second rest break rather than authorizing and permitting a separate second rest breaks. This
26 practice is unlawful despite any efforts by Defendants to provide a meal period for longer than 30
27 minutes.

28 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal

1 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
2 members, as required by the applicable Wage Order and Labor Code. Defendants did not have a
3 policy or practice which provided or accurately recorded all the legally required unpaid, off-duty
4 meal periods and all the legally required paid, off-duty rest periods to Employees. Plaintiff and
5 other Class members were required to perform work as ordered by Defendants or otherwise
6 remain under Defendants' control for more than five hours during a shift, or ten hours in a shift,
7 but were often required to do so without receiving a lawful, timely, and duty-free 30-minute meal
8 breaks. Additionally, as addressed above, Defendants followed a practice of requiring off the
9 clock work, in a manner that would impact when Employees were to receive meal periods and
10 rest breaks, thus leading to further violations.

11 26. As a result, Defendants' failure to provide Plaintiff and the Class members with all
12 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
13 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
14 either failed to maintain required records of when meal periods were actually provided or failed to
15 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
16 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
17 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
18 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
19 Defendants did pay any meal period premiums, they failed to include all forms of remuneration in
20 the regular rate used to calculate and pay it.

21 27. Therefore, for at least four years prior to the filing of this action and through to the
22 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
23 provided with the opportunity to take required meal breaks due to Defendants' policies and
24 practices. On the occasions when Plaintiff and the Class members were provided with a meal
25 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
26 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
27 more of the following manners:

28 (a) Class members were not provided full thirty-minute duty free meal periods

for work days in excess of five hours and were not compensated one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

(b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;

(c) Class members were required to work through at least part of their daily meal period(s);

(d) Meal periods were provided after five hours of continuous work during a shift; and

(e) Class members were restricted in their ability to take a full thirty-minute meal period or were otherwise required to remain under Defendants' control during meal periods.

28. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. Defendants failed to authorize and permit Plaintiff and the Class members to take a second rest break during their work shifts, as they only authorized and permitted one rest break for shifts of eight or even ten or more hours.

29. Upon information and belief, Defendants also unilaterally determined to combine the single meal period with a second rest break rather than authorizing and permitting a separate second rest breaks. This practice is unlawful despite any efforts by Defendants to provide a meal period for longer than 30 minutes. Defendants also required Plaintiff and the Class members to clock out at the start of their rest breaks and then back in at its completion. Defendants followed this practice, upon information and belief, to ensure Employees were not taking breaks that were too long. The added requirements of clocking in and out for rest periods, and being required to pass through security screening if they wanted to leave and return, reduced the time they were afforded for their rest break and impermissibly shortened them. As a result, Plaintiff and the Class

1 were accordingly discouraged from leaving Defendants' premises during any meal periods and
2 rest breaks.

3 30. Therefore, Defendants failed to authorize and permit Class members to take all
4 their required rest breaks. Plaintiff and the other similarly situated Class members were either not
5 authorized permitted the opportunity to take a rest break, or were required to remain under
6 Defendants' control and respond to instructions and job demands. Defendants also failed to
7 authorize and permit Employees to leave the premises during rest breaks, or else prevented or
8 discouraged them from doing so, thus further evidencing Defendants' policy and practice of
9 requiring Plaintiff and the Class members to remain under their control during required off-duty
10 rest breaks.

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

20 32. Plaintiff and the Employees in the Class were not authorized and permitted to take
21 lawful rest periods, were systematically required by Defendants to work through or during breaks,
22 and were not provided with one hour's wages in lieu thereof. They were required to remain on
23 duty during breaks or portions of their breaks, thus making them either untimely or shortened and
24 on-duty, and they were also prevented from leaving the premises during rest breaks under
25 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
26 following manners:

- 27 (a) Class members were required to work without being provided a minimum
28 ten minute rest period for every four hours or major fraction thereof worked

1 and were not compensated one hour of pay at their regular rate of
2 compensation for each workday that a rest period was not provided, and to
3 the extent Defendants paid any premiums, they failed to include all forms of
4 remuneration in the regular rate used to calculate and pay them.

5 (b) Class members were not authorized and permitted to take timely rest periods
6 for every four hours worked, or major fraction thereof; and

7 (c) Class members were required to remain on duty and under Defendants'
8 control during rest periods or otherwise had their rest periods interrupted by
9 work demands.

10 33. From at least four years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above described time shaving and
13 rounding and off the clock work before and after work shifts and automatically deducting hours
14 for unpaid meal periods Defendants failed to provide and unlawfully combining meal periods with
15 second rest breaks and unlawfully deducting time from hours worked for rest break time that
16 should have been paid at the regular hourly and overtime rates. By not compensating Employees
17 for all hours worked, and not recording any break times or permitting off-duty breaks, Defendants
18 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of
19 Labor Code § 221.

20 34. As a result of the above described illegal policies and practices, Defendants engaged
21 in and enforced the following additional unlawful practices and policies against Plaintiff and the
22 Class members he seeks to represent:

23 (a) failing to pay all wages owed to Class members who either were discharged,
24 laid off, or resigned in accordance with the requirements of Labor Code §§
25 201, 202, 203;

26 (b) failing to pay all wages owed to the Class members twice monthly in
27 accordance with the requirements of Labor Code § 204;

28 (c) failing to pay Class members all wages owed, including all meal and rest

1 period premium wages;

2 (d) failing to maintain accurate records of Class members' earned wages and
3 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
4 of the applicable IWC Wage Orders; and

5 (e) failing to produce timekeeping records in response to Plaintiff's timely and
6 lawful request to receive them under these authorities.

7 35. From at least four years prior to the filing of this lawsuit, and continuing to the
8 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
9 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
10 the above-described requirement of off the clock work, failure to pay all overtime, and failure to
11 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have
12 also made it difficult to account with precision for the unlawfully withheld wages and meal and
13 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
14 did not implement and preserve a record-keeping method as required for non-exempt employees
15 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
16 Orders. Upon information and belief, time clock punches were not maintained or were not
17 accurately maintained for work shifts and meal periods. Defendants also failed to accurately
18 record and pay for all regular and overtime hours worked by Plaintiff and the Class members.

19 36. Defendants also provided Plaintiff and the Class members with wage statements
20 that failed to accurately report all hours worked and applicable hourly rates for all hours worked,
21 including by reflecting rounded hours to the Employees' detriment and otherwise requiring off the
22 clock work. Defendants also provided wage statements that listed categories such as for regular
23 and overtime hours but omitting corresponding wage rates. For the same reasons as explained
24 above, Plaintiff and the Class members were provided with unlawful wage statements that failed
25 to reflect all hours worked by rounding and by only paying for his scheduled hours rather than his
26 actual hours and failed to pay for all overtime hours, including at the correct overtime rate.
27 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
28 were aware that Plaintiff and the Class members worked more total hours than were reflected on

1 the wage statements including overtime hours. Plaintiff and the Employees in the Class were
2 unable to discern from their wage statements alone the actual hours they worked in total during a
3 pay period and the rates they were paid for those hours worked.

4 37. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
5 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
6 and the Class members, along with the appropriate applicable rates, among other requirements.
7 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
8 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
9 7 of the applicable California IWC Wage Orders by failing to maintain accurate time records
10 showing when the employee begins and ends each work period, meal periods, wages earned
11 pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all
12 deductions from payment of wages and accurately reporting total hours worked by the Class
13 members.

14 38. Defendants required Plaintiff and the Class members to work hours off the clock
15 for which they were not compensated and engaged in systematic rounding to the detriment of
16 Employees, and Defendants also failed to pay all overtime premium wages owed for work
17 conducted on a work shift and a workday, as addressed above. Also, when Plaintiff was
18 terminated, he was not provided with his final pay at the time of termination. Therefore, from at
19 least three or four years prior to filing this lawsuit and continuing to the present, Defendants have
20 also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and
21 other similarly situated Employees at the time of their termination or within seventy-two hours of
22 their resignation, as required by California wage-and-hour laws. Defendants also failed to pay all
23 wages owed to those Class members at the time they were terminated or otherwise separated from
24 employment.

25 39. Plaintiff has requested records from Defendants and they have only partially
26 responded and responded untimely with what was provided. Therefore, Plaintiff also asserts that
27 Defendants have had a consistent policy of denying Plaintiff and Class members the right to
28 inspect and receive all of their payroll records, timecards, and personnel records.

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

20 41. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
21 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
22 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
23 1194.2 1197, 1198.5, 1199, 2698 *et seq.*, and California Code of Regulations, Title 8, section
24 11000 *et seq.*

25 42. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
26 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
27 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
28 fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

43. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by Defendants based out of their mortgage and title related offices and facilities within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants’ policy and practice of not timely paying all wages

1 earned when they were due and payable at least twice monthly.

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

6 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
7 Class members who, within the applicable limitations period, were denied the right to inspect and
8 receive all their payroll records, timecards, and personnel records.

9 j. Subclass 10. Payroll Records Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
11 by California wage-and-hour laws.

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

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

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

28 46. This action has been brought and may properly be maintained as a class action

1 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
2 of interest in this litigation and the proposed Class is easily ascertainable from the employment
3 records for Plaintiff and the Class members that Defendants are required to maintain under
4 California law.

5 **A. Numerosity**

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

12 **B. Commonality**

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

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

- 1 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
2 inaccurate wage statements and wage statements that omitted many of the Section
3 226(a) requirements.
- 4 g. Whether Defendants violated Labor Code § 221;
- 5 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
6 wages and compensation due and owing at the time of termination of employment;
- 7 i. Whether Defendants' conduct was willful;
- 8 j. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
9 IWC Wage Orders by failing to maintain accurate records of Class members'
10 earned wages and work periods;
- 11 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
12 Employees during the relevant time period for all hours worked, whether regular or
13 overtime;
- 14 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
15 wages earned at least twice monthly;
- 16 m. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
17 providing employees with all required sick days and COVID-19 supplemental sick
18 leave;
- 19 n. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 20 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 21 p. Whether Employees are entitled to equitable relief pursuant to Business and
22 Professions Code § 17200 *et seq.*

23 **C. Typicality**

24 49. The claims of the named Plaintiff are typical of those of the other Employees. The
25 Employee Class members all sustained injuries and damages arising out of and caused by
26 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
27 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
28 the off the clock work and meal and rest violations they were required to endure are typical of

1 those of the other Class members.

2 **D. Adequacy of Representation**

3 50. Plaintiff will fairly and adequately represent and protect the interest of the
4 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
5 experienced and competent in litigating employment class actions.

6 **E. Superiority of Class Action**

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

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

23 53. Class action treatment will allow those persons similarly situated to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
26 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
27 set forth the subject and nature of the instant action. The Defendants' own business records can be
28 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent

1 that any further notice is required additional media and/or mailings can be used.

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

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

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGES**
19 **(Against All Defendants)**

20 56. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

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

1 hours worked as scheduled rather than as actually worked, which resulted in off the clock work
2 and underpayment of all wages owed to Employees over a period of time, while benefiting
3 Defendants. During the relevant Class Period, Defendants thus regularly failed to pay minimum
4 wages to Plaintiff and the Class members, including by requiring systematic off the clock work
5 and by unlawfully deducting hours worked for rest break time. Defendants' uniform pattern of
6 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
7 whole, as a result of implementing a uniform policy and practice that denied accurate
8 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

9 58. In California, employees must be paid at least the then applicable state minimum
10 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
11 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
12 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
13 employee is subject to the control of an employer and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor
15 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
16 pay its employees for all hours worked. Defendants failed to do so.

17 59. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
18 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
19 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
20 applicable minimum wage rate fixed by the commission for work during the relevant period is
21 found in the Wage Orders.

22 60. The minimum wage provisions of California Labor Code are enforceable by private
23 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation, including
27 interest thereon, reasonable attorney's fees and costs of suit."

28 61. As described in California Labor Code §§ 1185 and 1194.2, any action for wages

1 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
2 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
3 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
4 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
5 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
6 Class members is and has been a direct consequence of Defendants' unlawful compensation
7 policies and practices, which applied uniformly to the Class members working at locations and
8 work sites throughout California.

9 62. In committing the above-described violations of the California Labor Code,
10 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
11 did not reflect their actual hours worked, or calculated the correct time worked and consequently
12 underpaid the actual time worked by Plaintiff and other members of the Class, including by
13 requiring off the clock work and unlawful deduction and rounding and refusing to pay all incurred
14 overtime, as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment
15 of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
16 Welfare Commission requirements and other applicable laws and regulations. As a result of these
17 violations, Defendants also failed to timely pay all wages earned in accordance with California
18 Labor Code § 1194.

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

23 64. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
24 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
25 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
26 pay each employee minimum wages.

27 65. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
28 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and

1 interest thereon.

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

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

21 **SECOND CAUSE OF ACTION**

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

23 **(Against All Defendants)**

24 68. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 69. California Labor Code § 1194 provides that "any employee receiving less than the
27 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
2 may be maintained directly against the employer in an employee's name without first filing a
3 claim with the Division of Labor Standards and Enforcement.

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

16 71. Defendants thus had a consistent policy of not paying Employees wages for all
17 hours worked, including hours at their required regular, overtime, and double-time rates.
18 Defendants required Plaintiff and the Class members to work off the clock to avoid paying all
19 their earned and owed straight time and overtime wages and other benefits, in violation of the
20 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
21 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
22 violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees
23 to work through meal periods when they were required to be clocked out or to otherwise work off
24 the clock to complete their daily job duties or to attend and participate in company required
25 activities or remain under Defendants' control. Therefore, Employees were not properly
26 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
27 given day, and/or forty hours in a given week. Based on information and belief, Defendants did
28 not make available to Employees a reasonable protocol for correcting time records when

1 Employees worked overtime hours or to fix incorrect time entries or those that Defendants
2 unlawfully under-recorded to the Employee's detriment, as Defendants required time records to
3 generally reflect scheduled shift times and discouraged and minimized overtime. Defendants also
4 under-paid Plaintiff and the putative Class members all wages by systematically miscalculating
5 and underpaying overtime wages they earned, as detailed above.

6 72. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
7 regular wages owed and overtime compensation for all hours worked, as required by California
8 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
9 IWC Wage Order, and is therefore unlawful.

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

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

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

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

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

77. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

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

79. Defendants failed to provide Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required to work or to otherwise remain under Defendants' control during meal periods, or Defendants unlawfully combined them with rest breaks and provided them after Employees worked beyond

1 the fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work
2 demands and requirements to remain under Defendants' control during off the clock time.
3 Furthermore, upon information and belief, on the occasions when Employees worked more than
4 ten hours in a given shift, they did so without receiving a second uninterrupted thirty-minute meal
5 period as required by law.

6 80. Defendants thus failed to provide Plaintiff and the Class members with meal
7 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
8 including by not providing them with the opportunity to take meal breaks, by providing them late
9 or for less than thirty minutes, or by requiring them to perform work during breaks.

10 81. Moreover, Defendants failed to compensate Employees for each meal period not
11 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
12 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 hour of pay at the employee's regular rate of compensation for each workday that the meal period
15 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
16 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
17 and 20 of the applicable IWC Wage Order.

18 82. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
19 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
20 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
21 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
22 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
23 other statutes and applicable IWC Wage Order paragraphs.

24 **FOURTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

27 83. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

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

4 85. Employees consistently worked consecutive four hour shifts and were generally
5 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
6 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
7 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
8 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
9 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no
10 efforts to authorize and permit rest breaks or otherwise schedule second rest breaks and combined
11 them unlawfully with meal periods, and Employees were often required to work or to otherwise
12 remain under Defendants' control during rest periods, and had breaks provided untimely as a
13 result of the above described off the clock work. Plaintiff and the Class members were also not
14 permitted to leave their work premises during any rest breaks they were able to take.

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

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

22 88. Defendants failed to authorize and permit Plaintiff and the Class members to take
23 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
24 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
25 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
26 12 and 20 of the applicable IWC Wage Orders.

27 89. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
28 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour

1 of wages at their effective hourly rates of pay for each day worked without the required rest
2 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
3 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

4 **FIFTH CAUSE OF ACTION**

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

6 **(Against All Defendants)**

7 90. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

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

16 92. Defendants failed to provide Plaintiff and the similarly situated Employee Class
17 members with accurate itemized wage statements in writing, as required by the Labor Code and
18 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
19 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
20 including by failing to pay for all hours worked, failing to pay for all overtime hours worked and
21 for providing deficient meal periods and rest breaks, or failed to list applicable rates for wages all
22 of which Defendants knew or reasonably should have known were owed to the Employees, as
23 alleged above.

24 93. Defendants also provided Plaintiff and the Class members with wage statements
25 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
26 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
27 the actual hours they worked in total during a pay period.

28 94. Throughout the liability period, Defendants intentionally failed to furnish to

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

12 95. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
13 and intentional failure to provide them with the wage and hour statements as required by law and
14 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
15 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
16 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
17 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
18 wage statement alone one or more of the following: (i) The amount of the gross wages or net
19 wages paid to the employee during the pay period or any of the other information required to be
20 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
21 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
22 wages paid to the employee during the pay period, (iii) The name and address of the employer
23 and, (iv) The name of the employee and only the last four digits of his or her social security
24 number or an employee identification number other than a social security number. For purposes
25 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
26 objective standard] would be able to readily ascertain the information without reference to other
27 documents or information.

28 96. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers

1 are required “to pay each employee, on the established payday for the period involved, not less
2 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
3 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
4 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
5 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
6 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
7 IWC Wage Orders.

8 97. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
9 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
10 Class suffered injuries, including among other things confusion over whether they received all
11 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
12 them to make mathematical computations to analyze whether the wages paid in fact compensated
13 them correctly for all hours worked.

14 98. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
15 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
16 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
17 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
18 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
19 an award of costs and reasonable attorneys’ fees.

20 **SIXTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 221**
22 **(Against All Defendants)**

23 99. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 100. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee.”
27 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
28 public policy, an employer must timely pay its employees for all hours worked. Defendants failed

1 to do so.

2 101. Defendants unlawfully received and/or collected wages from the Employees in the
3 Class by implementing a policy understating the hours worked by Employees and by rounding and
4 requiring off the clock work, and by combining meal periods with rest breaks and unlawfully
5 deducting hours worked for rest break time, and as otherwise alleged above.

6 102. As a direct and proximate cause of the unauthorized deductions, Employees have
7 been damaged, in an amount to be determined at trial.

8 **SEVENTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 204**
10 **(Against All Defendants)**

11 103. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 104. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
14 employment are due and payable twice during each calendar month, on days designated in
15 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
16 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
17 during which the labor was performed, and labor performed between the 16th and the last day,
18 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
19 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
20 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
21 calendar days following the close of the payroll period.” As detailed above, Defendants
22 maintained a consistently applied policy and practice of not paying all wages earned between the
23 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
24 between the 16th and the last day of the month between the 1st and 10th day of the following month.
25 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
26 hours they worked.

27 105. All wages due and owing to Plaintiff and the Class members, including as required
28 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages

1 required by Labor Code § 1194 and other sections became due and payable to each employee in
2 each pay period that he or she was not provided with a meal period or rest period or paid straight
3 or overtime wages to which he or she was entitled.

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

13 107. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
14 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
15 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
16 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
17 applicable IWC Wage Orders.

18 **EIGHTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 203**
20 **(Against All Defendants)**

21 108. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 109. Plaintiff and numerous Class members are no longer employed by Defendants; they
24 either quit Defendants’ employ or were fired therefrom.

25 110. Defendants failed to pay Plaintiff, and upon information and belief the other
26 Employees, all wages due and certain at the time of termination or within seventy-two (72) hours
27 of resignation, as addressed in detail above.

28 111. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty (30) days from the date of separation from employment.

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

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

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

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

3 **(Against All Defendants)**

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

6 116. California Labor Code § 1174 requires that all employers shall keep accurate time
7 and wage records for all employees. California Labor Code § 1174.5 further requires that any
8 employee suffering injury due to a willful violation of the aforementioned obligations may seek
9 damages, including civil penalties, from the employer.

10 117. During the course of Plaintiffs and Employees' employment, Defendants
11 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
12 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
13 overtime, and premium pay as discussed above.

14 118. Defendants are also required by the California Labor Code § 1198 and the
15 applicable Wage Order to maintain a tracking system that accurately records the times at which
16 Employees works.

17 119. Defendants have maintained a common unlawful policy and practice of failing to
18 accurately record meal breaks and work shift times, and unlawfully deducted rest break time from
19 hours worked. At all times relevant hereto, Defendants had maintained an unlawful uniform policy
20 and practice of editing the time records in order to make it appear as though Defendants'
21 Employees took timely and compliant meal breaks, and also unlawfully deducted an hour for meal
22 periods that were combined with rest breaks that also had to be recorded.

23 120. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
24 knew wages to be due but failed to pay them.

25 121. Accordingly, Defendants are liable for civil penalties pursuant to the California
26 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

3 **(Against All Defendants)**

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

6 123. Pursuant to California Labor Code § 226, current and former employees have the
7 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
8 request to their employer. Under this statute, an employer that receives a request to inspect or
9 receive a copy of records pertaining to a current or former employee must comply with the request
10 as soon as practicable, but no later than twenty-one (21) days from the date of the request.

11 124. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
12 or his or her representative, has the right to inspect and receive a copy of the personnel records
13 that the employer maintains relating to the employee's performance or to any grievance concerning
14 the employee. Under this statute, upon written request from a current or former employee or his or
15 her representative, an employer must make the contents of those personnel records available for
16 inspection or provide a copy of the personnel records to the current or former employee, or his or
17 her representative, not later than thirty (30) calendar days from the date the employer receives the
18 written request, subject to some limited exceptions. Failure to comply with these requests allows
19 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
20 226(f).

21 125. Plaintiff sent written requests through his counsel to Defendants for their payroll
22 records, timecards, and personnel records. However, Plaintiff has not received all of his requested
23 records as of the date of this Complaint, and the ones that were received were untimely.

24 126. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
25 produce the required records requested by Plaintiff.

26 127. On information and belief, Defendants' failure to provide Plaintiff with all of his
27 requested employment records is not an isolated incident, but was instead consistent with
28 Defendants' policy and practice that applied to Plaintiff and Employees.

1 128. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
2 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

3 129. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of
4 seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

5 **ELEVENTH CAUSE OF ACTION**
6 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
7 **(Against All Defendants)**

8 130. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

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

15 132. Plaintiff is a “person” within the meaning of Business & Professions Code
16 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
17 injunctive relief, restitution, and other appropriate equitable relief.

18 133. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
19 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
20 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
21 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
22 Class members for all hours worked, due to systematic business practices as alleged herein that
23 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
24 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
25 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
26 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

27 134. Wage-and-hour laws express fundamental public policies. Paying employees their
28 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental

1 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
2 vigorously to enforce minimum labor standards, to ensure that employees are not required or
3 permitted to work under substandard and unlawful conditions, and to protect law-abiding
4 employers and their employees from competitors who lower costs to themselves by failing to
5 comply with minimum labor standards.

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

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

17 137. By the conduct alleged herein, Defendants have engaged and continue to engage in
18 a business practice which violates California and federal law, including but not limited to, the
19 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
20 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
21 should issue declaratory and other equitable relief pursuant to California Business & Professions
22 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
23 competition, including restitution of wages wrongfully withheld.

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

26 139. Unless restrained by this Court, Defendants will continue to engage in the unlawful
27 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
28 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent

1 the use by Defendants or their agents or employees of any unlawful or deceptive practice
2 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
3 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
4 failed to pay.

5 **TWELFTH CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***
7 **(Against All Defendants)**

8 140. Plaintiff realleges and incorporate all preceding paragraphs, as though set
9 forth in full herein.

10 141. Plaintiff and the Employees in the Class are also aggrieved employees as
11 defined under Labor Code § 2699(c) in that they suffered the violations alleged in this
12 Complaint and either were or are employed by Defendants (“Aggrieved Employees”)
13 during the relevant time period.

14 142. In failing to pay Aggrieved Employees minimum wages and overtime, not
15 providing proper meal and rest periods, failing to provide accurate itemized wage
16 statements, and failing to pay Employees wages upon termination or timely upon
17 resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees
18 wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed
19 to maintain records showing accurate hours worked daily and the wages paid to Aggrieved
20 Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC
21 Wage Orders.

22 143. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
23 2699 for Defendants’ violation of Labor Code provisions included under Labor Code §
24 2699.5, including the penalty provisions, without limitation, based, inter alia, on the
25 following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7,
26 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199,
27 and 2698 *et seq.*

28 144. More specifically, after complying with the notice procedures of Labor Code

1 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney
2 General and the other similarly Aggrieved Employees, a PAGA claim for violations of the
3 above addressed underlying claims and seeking penalties as specified by the applicable
4 corresponding provisions, including as follows:

5 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
6 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
7 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
8 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
9 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
10 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
11 to Labor Code § 2699(g)(1);

12 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
13 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
14 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
15 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
16 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
17 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
18 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
19 pursuant to Labor Code § 2699(g)(1);

20 (c) Inaccurate Wage Statements and Failure to Maintain and Produce Records: For
21 failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements
22 and failure to maintain and produce employment records for Plaintiff and Aggrieved Employees
23 under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
24 IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable
25 under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1198.5, 1199, and 2699(f)(2), and paragraph 20
26 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code
27 § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain
28 records as required under Labor Code § 226(a), Defendants committed ongoing violations giving

1 rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by
2 law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per
3 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
4 each violation in a subsequent citation, ...”;

5 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
6 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
7 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
8 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
9 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
10 § 2699(g)(1);

11 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
12 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
13 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
14 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
15 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
16 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
17 pursuant to Labor Code § 2699(g)(1);

18 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
19 Defendants’ failure to provide Employees with all their required and earned sick days and all their
20 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
21 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
22 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to
23 Labor Code § 2699(g)(1); and

24 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code
25 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
26 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
27 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
28 paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to

1 Labor Code § 2699(g)(1).

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

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

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

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

14 146. Plaintiff has exhausted his administrative remedies by submitting a certified
15 letter to the LWDA and Defendants on July 27, 2023 (LWDA-CM-971288-23) addressing
16 in detail the specific provisions of the Labor Code Defendants have violated and addressing
17 the facts and legal theories to support the alleged violations and requested penalties. The
18 LWDA has not provided notice of its intent to investigate the alleged violations within 65
19 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking
20 penalties under the PAGA for the violations addressed herein and in the PAGA Notice
21 letter and the original Complaint.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff prays for the following relief:

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

1 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

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

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

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

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

11 8. For restitution and/or damages and penalties for Defendants' failure to pay all
12 wages due twice monthly under Labor Code § 204, as may be proven;

13 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
14 for all class members in violation of Labor Code § 221, as may be proven;

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

17 11. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
18 pay minimum wage;

19 12. For penalties pursuant to Labor Code § 1174.5, as may be proven;

20 13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

21 14. For restitution for unfair competition pursuant to Business & Professions Code
22 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

26 16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

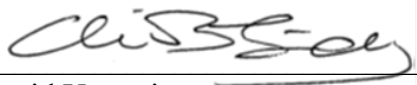
27 17. For penalties under Labor Code § 558, as may be proven;

28 18. For other wages and penalties under the Labor Code as may be proven;

- 1 19. For all general, special, and incidental damages as may be proven;
2 20. For an award of pre-judgment and post-judgment interest;
3 21. For an award providing for the payment of the costs of this suit;
4 22. For an award of attorneys' fees; and
5 23. For such other and further relief as this Court may deem proper and just.

6
7 DATED: October 27, 2023

D.LAW, INC.

8
9 By 
10 David Yeremian
11 Alvin B. Lindsay
12 Attorneys for Plaintiff ERICK F.
13 HARMON, on behalf of himself and others
14 similarly situated
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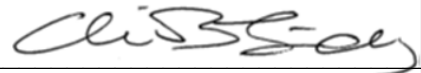
DEMAND FOR JURY TRIAL

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

DATED: October 27, 2023

D.LAW, INC.

By



David Yermian
Alvin B. Lindsay
Attorneys for Plaintiff ERICK F.
HARMON, on behalf of himself and others
similarly situated

Case Title:

Documents Electronically Filed/Received

Amended Complaint\n(1st)

Status

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider LegalConnect

Email: support@legalconnect.com

Contact Person: Customer Support

Phone: 8009096859