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VENTURA
SUPERIOR COURT
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BRENDA L. McCORMICK
Executive Officer and Clerk

BY: _____, Deputy
SUSANNE LEON

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff Rodrigo Galvan Flores, on
behalf of himself and others similarly situated

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

RODRIGO GALVAN FLORES, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

STATE READY MIX, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 2023CUOE012096

CLASS ACTION

Assigned for All Purposes To:
Hon. Jeffrey G. Bennett
Dept.: 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
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;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 2802
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
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
Trial Date: None set.

1 Plaintiff RODRIGO GALVAN FLORES (hereinafter “Plaintiff”), on behalf of himself and
2 other similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”), complains of Defendants, and each of
4 them, as 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 from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees by Defendants STATE
9 READY MIX, INC., a California corporation, and DOES 1 through 50, inclusive (all defendants
10 being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each
11 of them, violated various provisions of the California Labor Code, relevant orders of the Industrial
12 Welfare Commission (“IWC”), and the California Business & Professions Code, and seeks redress
13 for these violations.

14 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for
15 Defendants based out of their concrete plant facilities in California. Plaintiff and the Class
16 members worked as laborers in connection with Defendants’ ongoing cement production
17 operations, the preparation of ready mix and transferring it into agitator trucks to deliver to
18 customers, and also recycling and repurposing dry blocks of used concrete to convert to dry gravel
19 for reuse or sale. Their job duties also included cleaning their work areas and the trucks and
20 vehicles and equipment and assisting in the maintenance and repair of equipment and machinery
21 attendant to Defendants’ cement production and recycling facility operations. Similarly situated
22 Employees subject to the same policies and practices worked with Plaintiff as co-workers at
23 Defendants’ California plant facilities, including in positions such as drivers and machine
24 operators and the like.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and failed to record accurate time worked by these Employees, failed to pay them at the
27 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
28 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that

1 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
2 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
3 under Defendants' control and were otherwise not provided with the opportunity to take full
4 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
5 applicable paragraphs of the IWC Wage Orders.

6 4. Defendant STATE READY MIX, INC. is a California corporation headquartered
7 in Ventura, California, and is listed as the employer on wage statements issued to Plaintiff and
8 upon information and belief the other Class members. STATE READY MIX, INC. maintains a
9 plant facility in Ventura, California along with offices and other facilities in Oxnard, California,
10 and provides ready mix and concrete related products and services to customers throughout
11 California, including in Ventura and Santa Barbara Counties. It lists its type of business with the
12 California Secretary of State as "Ready Mix Concrete" and lists a principal California address in
13 Ventura, California.

14 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
16 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
17 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
18 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
19 obligations and liabilities giving rise to this lawsuit occurred, at least in large part, in Ventura
20 County and in the plant and related facilities Defendants maintain there.

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

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

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable paragraphs of IWC Wage Orders.

9. Plaintiff his co-workers kept the plant operations running and the machinery fed through equipment operation and material selection and machinery maintenance. During the course of Plaintiff and the Class members' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants

1 employ other non-exempt, hourly laborers in similar concrete production and recycling related
2 positions based out of Defendants' facilities in California.

3 10. Plaintiff and the Class members were required to clock in by scanning an
4 electronic card into a time clock, but were also required to use two separate time cards – one to
5 clock in for their work shifts and the other to clock out after their completion. However,
6 Defendants did not maintain electronic timekeeping records for meal period beginning and
7 completion times, and accordingly failed to maintain accurate to the minute records of meal
8 period times despite having the ability to do so.

9 11. Instead, Employees were provided a timesheet they were required to use to
10 manually record meal period beginning and completion times. Under Defendants' policies and
11 practices, Defendants would instruct Employees they must list the times their managers told them
12 to list for meal period beginning and ending punches rather than the actual times they were taken.
13 In other words, Plaintiff and the other Class members were compelled by Defendants to list
14 scheduled meal period times that generally failed to reflect the actual times meal periods were
15 actually taken, if at all, and would do so by foregoing electronic timekeeping records in favor of
16 manual timesheets that would allow this unlawful practice to perpetuate.

17 12. Plaintiff was generally scheduled to work 10 hour days, five days a week, from
18 6:00 a.m. to 4:00 p.m. Plaintiff also worked some Saturdays, with a shorter work period of 6:00
19 a.m. through 1:00 p.m. or later, and even some Sundays from 7:00 a.m. through the early
20 afternoon. Defendants thus scheduled Plaintiff to work for extended shifts of various scheduled
21 duration, but in reality, he worked more hours than just those that were scheduled and did so
22 without being compensated by Defendants. Defendants also made no effort to schedule any rest
23 breaks, and instead provided employees with only one meal period of one hour in duration.
24 Defendants thus unlawfully combined meal periods and rest breaks in addition to failing to
25 provide all meal periods and breaks, providing them untimely, or providing them for less than the
26 required durations. Additionally, given the off the clock work Defendants required of their
27 Employees in the Class, they worked shifts of over ten hours without receiving a second meal
28 period or a third rest break.

1 13. Plaintiff was required to be at work for the scheduled start of his shift, and would
2 therefore arrive at work a few minutes prior to that scheduled time so that he could walk to a time
3 clock, wait in line, and then clock in at the scheduled time. He was not compensated for this time.
4 Plaintiff was also required to respond to work calls on his personal cell phone on a regular basis
5 while he was attempting to take a meal period or a rest break, thus resulting in further off the
6 clock work. Defendants have also rounded timekeeping entries down to the Employee's detriment
7 and failed to begin paying overtime premiums as they were incurred or for their full duration.
8 Given Defendants' uniformly applied policy of not providing rest breaks at least at four hour
9 intervals throughout a work shift, and instead unlawfully combining them with meal periods and
10 deducting the time from hours worked, Defendants have committed ongoing wage theft by
11 deducting automatically wages from the actual hours worked each shift that should have been
12 paid at the required regular and overtime rates.

13 14. Plaintiff was therefore not paid for all his hours worked at the required minimum,
14 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
15 and practice of requiring him to work off the clock and without pay. Defendants systematically
16 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates
17 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
18 day at the required double time rate. Upon information and belief, the Class members were bound
19 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
20 hands as Plaintiff.

21 15. Defendants have either failed to maintain timekeeping records for Plaintiff that
22 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
23 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
24 declined to produce them to Plaintiff in response to a timely and lawful records request. By
25 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the
26 Class members, Defendants have committed knowing and intentional ongoing violations of the
27 record keeping requirements under the Labor Code, including section 1174, by either failing to
28 maintain records or retaining inaccurate ones.

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

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

18 18. Defendants also failed to provide Plaintiff and the Class members with their
19 required meal periods and the at least two or three ten-minute rest breaks required for scheduled
20 shifts duration. The above described off the clock work contributed to Defendants' common policy
21 of failing to provide lawful meal periods to Plaintiff and the Class members, as required under the
22 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize
23 and permit Plaintiff and the employee Class Members to take all required 10-minute rest breaks, as
24 required under the Labor Code and Paragraph 12 of the IWC Wage Order(s). Defendants failed to
25 pay meal period or rest break premiums for all meal periods they unlawfully provided or failed to
26 provide, or else failed to include all forms of remuneration received during the pay period in any
27 regular rate calculation used to calculate and pay meal period premiums.

28 19. Defendants did not schedule meal periods and it was up to managers to decide

1 when and if to stop production so the Employees could take a meal break. Plaintiff and the Class
2 members therefore did not take a meal break until they received instruction and permission from a
3 manager to do so. Defendants also discouraged employees from leaving the premises during any
4 meal period they did take, and required them to clock in and out with their badge scan anytime
5 they did attempt to leave. Despite requiring work shifts of over ten hours, Defendants also made
6 no effort to scheduled second meal periods or otherwise even authorize Class members to take a
7 second break of any kind. Defendants have also committed ongoing violations for failure to
8 provide meal periods by unlawfully combining them with rest breaks and providing them, if at all,
9 untimely at well after five hours into the shift.

10 20. Defendants also required machinery and equipment to remain working and
11 producing throughout the shift, which often rendered Plaintiff and the Class members unable to
12 take breaks or to take them on time or for the required duration. In some instances when Plaintiff
13 was permitted to take a meal break, it wasn't until eight or nine hours into the shift. Given
14 Defendants failure to provide any separate rest breaks from meal periods, Plaintiff and the Class
15 members were required in those instances to work over eight hours without a break of any kind,
16 and to then have 20-30 minutes of their hours worked deducted for alleged rest breaks that were
17 never even provided. Defendants' managers were strict in enforcing this unlawful policy and
18 practice of failing to provide rest breaks, and would chastise Employees if they asked to get a
19 drink of water or take any rest and remind them that their hour long lunch break was for resting
20 and hydrating.

21 21. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
24 members were required to perform work as ordered by Defendants for more than five hours during
25 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
26 followed a practice of requiring off the clock work in a manner that would impact when
27 Employees were to receive meal periods and rest breaks, thus leading to further violations.

28 22. Upon information and belief, Defendants' systems did not automatically generate a

1 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
2 into a work shift or in the event the time punch records reflected a meal period of less than 30
3 minutes or a missed meal. However, upon information and belief, in the event Defendants did pay
4 any meal period premiums, they did so at the employee's customary regular rate of hourly
5 compensation without including all forms of remuneration in that hourly rate calculation, for
6 example by omitting bonuses or shift differentials and the like from the rate at which meal
7 premiums were paid.

8 23. Defendants thus followed uniformly applied policies of not providing all required
9 meal periods to their Employees. Meal periods were often not properly provided, as work
10 demands impermissibly shortened their breaks or rendered them untimely. Even when Plaintiff
11 and the Class members were able to take a meal period, it was often provided for less than the
12 required 30 minutes or was otherwise interrupted by work duties or was taken after the fifth hour
13 of work. Additionally, as addressed above, Defendants followed a practice of requiring off the
14 clock work in a manner that would impact when Employees were to receive meal periods and rest
15 breaks, thus leading to further violations.

16 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
17 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
18 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
19 detailed above, Defendants also failed to pay Employees "premium pay," i.e., one hour of wages
20 at each Employee's effective regular hourly rate of compensation for each meal period or rest
21 break that Defendants failed to provide or deficiently provided.

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

- 1 (a) Class members were not provided full thirty-minute duty free meal periods
2 for work days in excess of five hours and were not compensated one hour's
3 wages in lieu thereof, or were not compensated at the correct regular rate
4 of compensation, all in violation of, among others, Labor Code §§ 226.7,
5 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 6 (b) Class members were not provided second full thirty-minute duty free meal
7 periods for work days in excess of ten hours;
- 8 (c) Class members were required to work through at least part of their daily
9 meal period(s);
- 10 (d) Meal periods were provided after five hours of continuous work during a
11 shift; and
- 12 (e) Class members were restricted in their ability to take a full thirty-minute
13 meal period or to leave Defendants' premises.

14 26. Similar violations resulted from Defendants' failure to authorize and permit
15 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
16 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
17 were either not authorized permitted the opportunity to take a rest break, or were required to
18 remain under Defendants' control and respond to instructions and job demands. Upon
19 information and belief, Defendants also failed to authorize and permit employees to leave the
20 premises during rest breaks, thus evidencing Defendants' policy and practice of requiring
21 Plaintiff and the Class members to remain under their control during required off-duty rest break
22 times. Defendants' uniformly applied policies and practices thus resulted in untimely and
23 shortened or on-duty rest breaks when they were authorized and permitted.

24 27. Defendants also made no effort to schedule any rest breaks, and instead provided
25 employees with only one meal period of one hour in duration. Defendants thus unlawfully
26 combined meal periods and rest breaks in addition to failing to provide all meal periods and
27 breaks, proving them untimely, or providing them for less than the required durations. Plaintiff
28 was also required to respond to work calls on his personal cell phone on a regular basis while he

1 was attempting to take a meal period or a rest break, thus resulting in further off the clock work
2 and break violations. Given Defendants' uniformly applied policy of not providing rest breaks at
3 least at four hour intervals throughout a work shift, and instead unlawfully combining them with
4 meal periods and deducting the time from hours worked, Defendants have committed ongoing
5 wage theft by deducting automatically wages from the actual hours worked each shift that should
6 have been paid at the required regular and overtime rates. Additionally, given the off the clock
7 work Defendants required of their Employees in the Class, they worked shifts of over ten hours
8 without receiving a second meal period or a third rest break.

9 28. During rest periods, employers must relieve employees of all duties and relinquish
10 control over how employees spend their time. Plaintiff and the Class members were and are under
11 Defendants' control when they are working through rest breaks. Defendants have also provided
12 either impermissibly shortened or untimely rest breaks to Plaintiff and the Class members.
13 Plaintiff and the Employees in the Class were thus not authorized and permitted to take lawful
14 rest periods, were systematically required by Defendants to work through or during breaks, and
15 had rest breaks unlawfully combined with meal periods, and were not provided with one hour's
16 wages in lieu thereof. In fact, they were not paid for rest break time as required under the Labor
17 Code and Wage Orders and also were not paid an hour of premium wages for each shift during
18 which they were not authorized and permitted to take any separate rest breaks. They were thus
19 required to remain on duty during breaks or portions of their breaks, thus making them either
20 untimely or shortened and on-duty, and they were also prevented from leaving the premises
21 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
22 in one or more of the following manners:

- 23 (a) Class members were required to work without being provided a minimum
24 ten minute rest period for every four hours or major fraction thereof
25 worked and were not compensated one hour of pay at their regular rate of
26 compensation for each workday that a rest period was not provided;
- 27 (b) Class members were not authorized and permitted to take timely rest
28 periods for every four hours worked, or major fraction thereof; and

1 (c) Class members were required to remain on duty during rest periods or
2 otherwise had their rest periods interrupted by work demands.

3 29. From at least four years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
5 deducting the Employees' earned wages, including by the above described off the clock work and
6 on-duty work while on unpaid meal breaks and by unlawfully deducting rest break time from
7 hours worked. By not compensating Employees for all hours worked, Defendants unlawfully
8 deducted wages earned in violation of Labor Code § 221.

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

28 31. As a result of these illegal policies and practices, Defendants also engaged in and

1 enforced the following additional unlawful practices and policies against Plaintiff and the Class
2 members he seeks to represent:

- 3 a. failing to pay all wages owed to Class members who either were discharged, laid
4 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
5 203;
- 6 b. failing to pay all wages owed to the Class members twice monthly in accordance
7 with the requirements of Labor Code § 204;
- 8 c. failing to pay Class members all wages owed, including all meal and rest period
9 premium wages, and failing to pay them at the regular rate of compensation;
- 10 d. failing to maintain accurate records of Class members' hours worked and earned
11 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and
12 section 7 of the applicable IWC Wage Orders; and
- 13 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
14 request to receive them under these authorities.

15 32. Defendants have also consistently failed to provide Class members with timely,
16 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
17 including by the above-described requirement of off the clock work, failure to pay all overtime
18 and double time wages owed, and failure to pay premium wages for unprovided or otherwise
19 unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break
20 premium wages. Defendants have also made it difficult to account with precision for the
21 unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class,
22 during the liability period, including to the extent they did not calculate the regular rate of pay
23 correctly when paying overtime or meal period premiums and because they did not implement and
24 preserve a record-keeping method as required for non-exempt employees by California Labor
25 Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon
26 information and belief, time clock punches were not maintained or were not accurately maintained
27 for work shifts and meal periods, which were automatically presumed by Defendants to have been
28 lawfully provided when they were not. Defendants also failed to accurately record and pay for all

1 regular and overtime hours worked and submitted by Plaintiff and the Class members, including
2 by failing to pay all overtime hours at the correctly calculated overtime premium rate.

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

12 34. Defendants also required Plaintiff and the Class members to work hours off the
13 clock for which they were not compensated. They were also required to endure off the clock work
14 and systematic rounding and failure to pay all wages as addressed above and during interrupted or
15 otherwise on-duty meal and rest periods and were not provided with rest breaks or with sick pay
16 and supplemental sick leave. Defendants also failed to pay all overtime premium wages owed for
17 work conducted on a work shift and a workday, as addressed above. Therefore, Defendants have
18 also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and
19 other similarly situated Employees at the time of their termination or within seventy-two hours of
20 their resignation, as required by California wage-and-hour laws.

21 35. Additionally, from at least four years prior to the filing of this lawsuit and
22 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
23 incur necessary business expenses in the course of performing their required job duties without
24 reimbursement. Defendants regularly communicated with Plaintiff and other similarly situated
25 Employees in the Class during their work shifts by calling and texting them on their personal
26 cellular phones. Plaintiff received various calls throughout the day from managers instructing him
27 on what needed to be done for plant operations that required his attention. Defendants did so
28 without regard to whether Plaintiff was attempting to take a meal period or rest break of any kind.

1 In addition to failing to compensate Plaintiff and the Class members for failure to pay wages
2 during on-duty breaks, Defendants also failed to reimburse them for any of their personal cellular
3 phone expenses. Defendants also required Plaintiff and the Class members to incur other
4 expenses necessary to perform their required job duties. For example, Plaintiff was required to
5 purchase a flashlight so he could work when the sun went or was down, a grinder, wrenches and
6 tools for machine repairs, and gloves, all without reimbursement and all of which were necessary
7 to perform his daily job duties.

8 36. Upon information and belief, the other Class members incurred similar expenses
9 for performing necessary work-related communications, for which they were also not reimbursed
10 by Defendant. Plaintiff and the Class members must be reimbursed for these necessary business
11 expenses under Labor Code § 2802 and Defendants systematically failed to do so. Defendants
12 uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred
13 in direct discharge of their job duties during employment with Defendants and at the direction of
14 the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders,
15 paragraph 9.

16 37. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
17 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246,
18 248.1, 248.5, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, and 2698 *et seq.*, and
19 California Code of Regulations, Title 8, section 11000 *et seq.*

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

24 **CLASS ALLEGATIONS**

25 39. Plaintiff brings this class action on behalf of himself and all others similarly
26 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
27 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
28 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 at or based out of Defendants’ 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 earned when they were due and payable at least twice monthly.

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

i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred

1 necessary and reasonable expenses in connection with performing their job duties for Defendants
2 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

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

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

22 42. This action has been brought and may properly be maintained as a class action
23 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
24 of interest in this litigation and the proposed Class is easily ascertainable from the employment
25 records for Plaintiff and the Class members that Defendants are required to maintain under
26 California law.

27 **A. Numerosity**

28 43. The potential members of the class as defined are so numerous that joinder of all

1 the member of the class is impracticable. While the precise number of class member has not been
2 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
3 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
4 Class definition within the State of California. Plaintiff alleges that Defendants' employment
5 records will provide information as to the number and location of all Class members.

6 **B. Commonality**

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

- 13 a. Whether Defendants failed to pay Employees minimum wages;
- 14 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 15 c. Whether Defendants failed to pay Employees overtime as required under Labor
16 Code § 510;
- 17 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
18 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
19 premium pay in lieu thereof;
- 20 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
21 Orders, by failing to authorize and permit Employees to take requisite rest breaks
22 or provide premium pay in lieu thereof;
- 23 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
24 providing employees with all required sick days and COVID-19 supplemental sick
25 leave;
- 26 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
27 inaccurate wage statements;
28

- 1 h. Whether Defendants violated Labor Code § 221;
- 2 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 3 wages and compensation due and owing at the time of termination of employment;
- 4 j. Whether Defendants' conduct was willful;
- 5 k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
- 6 Orders by failing to maintain accurate records of Class members' earned wages and
- 7 work periods;
- 8 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
- 9 Employees during the relevant time period for all hours worked, whether regular or
- 10 overtime;
- 11 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
- 12 wages earned at least twice monthly;
- 13 n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
- 14 business expenses incurred by Employees;
- 15 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 16 p. Whether Employees are entitled to equitable relief pursuant to Business and
- 17 Professions Code § 17200 *et seq.*

18 **C. Typicality**

19 45. The claims of the named plaintiff are typical of those of the other Employees. The

20 Employee Class members all sustained injuries and damages arising out of and caused by

21 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as

22 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

23 the off the clock work and meal and rest violations he was required to endure are typical of those

24 of the other Class members.

25 **D. Adequacy of Representation**

26 46. Plaintiff will fairly and adequately represent and protect the interest of the

27 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are

28 experienced and competent in litigating employment class actions.

E. Superiority of Class Action

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

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

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

50. Defendants, as prospective and actual employers of the Employees in the Class, had a special fiduciary duty to disclose to prospective Class members the true facts surrounding Defendants' pay practices, policies and working conditions imposed upon the similarly situated Employees as well as the effect of any alleged arbitration agreements that may have been forced

1 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
2 and policies, most notably intentionally refusing to pay for all hours actually worked which should
3 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
4 agreements and policies and practices on the Employees and Class as a whole.

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

12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PAY MINIMUM WAGES**
14 **(Against All Defendants)**

15 52. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 53. Defendants failed to pay Employees minimum wages for all hours worked.
18 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
19 would work hours and not receive wages, including as alleged above in connection with unpaid
20 rest breaks and off the clock work and rounding and time shaving, and including all the time
21 required to remain on duty and under Defendants' control during breaks and due to the work
22 demands placed upon them by Defendants' management and customers. Defendants' uniformly
23 applied policies required systematic off the clock work and underpayment of all wages owed to
24 Employees over a period of time, while benefiting Defendants. During the relevant time period,
25 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
26 including by requiring systematic off the clock work. To the extent any local wage ordinances
27 were also applicable to paying the employees an hourly rate above the minimum wage rate,
28 Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of

1 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
2 whole, as a result of implementing a uniform policy and practice that denied accurate
3 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

4 54. In California, employees must be paid at least the then applicable state minimum
5 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
6 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally,
7 pursuant to California Labor Code § 204, other applicable laws and regulations, and public
8 policy, an employer must timely pay its employees for all hours worked. Defendants failed to do
9 so.

10 55. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
11 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
12 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
13 applicable minimum wage rate fixed by the commission for work during the relevant period is
14 found in the Wage Orders.

15 56. The minimum wage provisions of California Labor Code are enforceable by private
16 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
17 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation, including
20 interest thereon, reasonable attorney’s fees and costs of suit.”

21 57. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
22 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
23 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
24 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
25 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
26 the absence of a contractually agreed upon one.

27 58. In committing these violations of the California Labor Code, Defendants
28 inaccurately recorded, or required Plaintiff and the Class members to input times that did not

1 reflect their actual hours worked, or miscalculate hours or rates or otherwise underpaid the actual
2 time worked by Plaintiff and other members of the Class, including by requiring off the clock
3 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
4 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
5 Welfare Commission requirements and other applicable laws and regulations. As a result of these
6 violations, Defendants also failed to timely pay all wages earned in accordance with California
7 Labor Code § 1194.

8 59. California Labor Code § 1194.2 also provides for the following remedies: “In any
9 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
10 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
11 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

12 60. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
13 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
14 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
15 pay each employee minimum wages.

16 61. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
17 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
18 interest thereon.

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

22 63. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
23 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
24 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
25 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
26 members of the Class further request recovery of all unpaid wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. To the extent minimum

1 wage compensation is determined to be owed to the Class members who have terminated their
2 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
3 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
4 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
5 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
6 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
7 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
8 members are entitled to seek and recover statutory costs.

9 **SECOND CAUSE OF ACTION**

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

11 **(Against All Defendants)**

12 64. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 65. California Labor Code § 1194 provides that "any employee receiving less than the
15 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
16 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
17 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
18 may be maintained directly against the employer in an employee's name without first filing a
19 claim with the Division of Labor Standards and Enforcement.

20 66. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
21 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
22 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
23 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
24 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
25 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
26 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
27 work in a workweek.

28 67. Defendants had a consistent policy of not paying Employees wages for all hours

1 worked, including by not paying for rest break time and rounding and requiring off the clock work
2 as addressed above, by under-reporting actual hours worked, and by requiring Employees to do so
3 as well. Defendants have also failed to include all forms of remuneration in the regular rate of pay
4 used to calculate and pay overtime, and failed to begin paying overtime when it was incurred due
5 to the off the clock work, as detailed above.

6 68. Defendants thus had a consistent policy of not paying Employees wages for all
7 hours worked, including hours at their required regular, overtime, and double-time rates.
8 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
9 and/or modified certain employees' hours, including Plaintiff's, or otherwise caused them to work
10 off the clock to avoid paying Plaintiff and the Class members all earned and owed straight time
11 and overtime wages and other benefits, in violation of the California Labor Code, the California
12 Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
13 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
14 and other similarly situated non-exempt employees to work through meal periods or remain under
15 Defendants' control when they were required to be clocked out or to otherwise work off the clock
16 to complete their daily job duties and respond to demands from customers and managers.

17 69. Therefore, Employees were not properly compensated, nor were they paid overtime
18 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
19 Based on information and belief, Defendants did not make available to Employees a reasonable
20 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
21 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
22 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
23 Class members to work through meal periods when they were required to be clocked out or to
24 otherwise work off the clock to complete their daily job duties.

25 70. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
26 regular wages owed and overtime compensation for all hours worked, as required by California
27 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
28 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the

1 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

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

15 72. Defendants’ failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 and overtime compensation earned by Employees. Each such failure to make a timely payment of
20 compensation to Employees constitutes a separate violation of California Labor Code § 204.

21 73. Employees have been damaged by these violations of California Labor Code §§
22 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
23 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
24 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
25 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
26 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
27 any order or ruling of the commission.”

28 74. Consequently, pursuant to the California Labor Code, including Labor Code §§

204, 510, 558, 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)

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

76. 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 (30) minutes.

77. 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 provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work demands and requirements to perform off the clock work and remain under Defendants' control. Defendants also unlawfully combined meal periods with rest breaks and deducted hours worked for both. Furthermore, upon information and belief, on the occasions when Employees worked more than ten hours in a given shift, they did so without receiving a second uninterrupted thirty-minute meal period as required by law.

78. Defendants thus failed to provide Plaintiff and the Class members with meal periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,

1 including by not providing them with the opportunity to take meal breaks, by providing them late
2 or for less than thirty minutes, or by requiring them to perform work during breaks.

3 79. Moreover, Defendants failed to compensate Employees for each meal period not
4 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
5 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
6 employee a meal period in accordance with this section, the employer shall pay the employee one
7 hour of pay at the employee's regular rate of compensation for each workday that the meal period
8 is not provided. On the occasions when Defendants did pay any meal period premiums, they upon
9 information and belief underpaid them by miscalculating the regular rate of compensation by not
10 including all forms of remuneration in it. Defendants thus failed to compensate the Employees in
11 the Class for each meal period not provided or inadequately provided, as required under Labor
12 Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

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

19 **FOURTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

22 81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

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

27 83. Employees consistently worked consecutive four hour shifts and were generally
28 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and

1 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
2 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
3 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
4 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
5 required to work or to otherwise remain under Defendants' control during rest periods, including
6 by responding to work requirements, and had breaks provided untimely as a result of the above
7 described off the clock work. Plaintiff and the Class members were also not permitted to leave
8 their work premises during rest breaks. Additionally, given Defendants failure to provide any
9 separate rest breaks from meal periods, Plaintiff and the Class members were required in those
10 instances to work over eight hours without a break of any kind, and to then have 20-30 minutes of
11 their hours worked deducted for alleged rest breaks that were never even provided. Defendants'
12 managers were strict in enforcing this unlawful policy and practice of failing to provide rest
13 breaks, and would chastise Employees if they asked to get a drink of water or take any rest and
14 remind them that their hour-long lunch break was for resting and hydrating.

15 84. 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 (as further detailed above regarding meal periods) for each workday that the rest
19 period is not provided. Defendants failed to do so.

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

23 86. Defendants failed to authorize and permit Plaintiff and the Class members to take
24 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
25 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
26 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
27 12 and 20 of the applicable IWC Wage Orders.

28 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the

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

5 **FIFTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 226(a)**
7 **(Against All Defendants)**

8 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

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

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

24 91. As detailed above, Defendants intentionally failed throughout the liability period to
25 furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements
26 accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the
27 number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all
28 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is

1 paid, (7) the name of the employee and only the last four digits of his or her social security
2 number or an employee identification number other than a social security number, (8) the name
3 and address of the legal entity that is the employer and (9) all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at each hourly rate by the
5 employee pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders,
6 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
7 Plaintiff and the Class members with such timely and accurate wage and hour statements, and
8 omitted required information that Plaintiff and the Class members could not resolve by reference
9 to the alleged wage statement alone.

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

26 93. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
27 are required "to pay each employee, on the established payday for the period involved, not less
28 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor

Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

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

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

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

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

98. Defendants unlawfully received and/or collected wages from the Employees in the

1 Class by requiring off the clock work and by rounding and automatically deducting time for meal
2 periods when they were not lawfully provided and not paying one hour of pay at the regular rate of
3 compensation for every meal and rest period violation endured by Plaintiff and the other Class
4 members, as alleged above. Given Defendants failure to provide any separate rest breaks from
5 meal periods, Plaintiff and the Class members had 20-30 minutes of their hours worked deducted
6 for alleged rest breaks that were never even provided despite the fact Defendant was required to
7 compensate them for rest break time at their regular rate of pay

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

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

13 100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

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

1 to issue compliant wage statements to Plaintiff and the Class members.

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

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

16 104. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
17 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
18 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
19 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
20 applicable IWC Wage Orders.

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

24 105. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 106. Plaintiff and numerous Class members are no longer employed by Defendants; they
27 either quit Defendants’ employ or were fired therefrom.

28 107. Defendants failed to pay these Employees all wages due and certain at the time of

1 termination or within seventy-two (72) hours of resignation.

2 108. The wages withheld from these Employees by Defendants remained due and owing
3 for more than thirty days from the date of separation from employment.

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

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

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

27 ///

28 ///

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

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

113. Plaintiff and the Class are informed and believe and based thereon allege that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. As detailed above, Plaintiff received various calls throughout the day from managers instructing him on what needed to be done for plant operations that required his attention. In addition to failing to compensate Plaintiff and the Class members for failure to pay wages during on-duty breaks, Defendants also failed to reimburse them for any of their personal cellular phone expenses. Defendants also required Plaintiff and the Class members to incur other expenses necessary to perform their required job duties. For example, Plaintiff was required to purchase a flashlight so he could work when the sun went or was down, a grinder, wrenches and tools for machine repairs, and gloves, all without reimbursement and all of which were necessary to perform his daily job duties.

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

115. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

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

TENTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

119. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above and failing to maintain records of hours worked and of meal periods taken.

120. Defendants are also required by the California Labor Code § 1198 and the applicable Wage Order to maintain a tracking system that accurately records the times at which Employees work. Defendants have maintained a common unlawful policy and practice of failing to accurately record hours worked and meal breaks.

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

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

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

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

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

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

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

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

1 comply with minimum labor standards.

2 128. Defendants have violated statutes and public policies. Through the conduct alleged
3 in this Complaint Defendants have acted contrary to these public policies, have violated specific
4 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
5 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
6 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
7 guaranteed to all employees under the law.

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

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

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

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

23 133. Unless restrained by this Court Defendants will continue to engage in such unlawful
24 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
25 such orders or judgments as may be necessary to prevent the use by Defendants or their agents or
26 employees of any unlawful or deceptive practice prohibited by the Business & Professions Code,
27 including but not limited to the disgorgement of such profits as may be necessary to restore
28 Employees to the money Defendants have unlawfully failed to pay.

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

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

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

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

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

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

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime

1 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
2 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
3 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
4 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
5 to Labor Code § 2699(g)(1);

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

14 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
15 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
16 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
17 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
18 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
19 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
20 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
21 providing inaccurate wage statements and failing to maintain records as required under Labor
22 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
23 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
24 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
25 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
26 citation, ...";

27 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
28 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,

226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

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

(c) The civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.

2 140. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
3 the LWDA and Defendants on July 26, 2023 (LWDA-CM-970997-23) addressing in detail the
4 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
5 theories to support the alleged violations and requested penalties. The LWDA has not provided
6 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
7 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
8 addressed herein and in the PAGA Notice letter and the original Complaint.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays for the following relief:

- 11 1. For an order certifying this action as a class action;
- 12 2. For compensatory damages in the amount of the unpaid minimum wages for work
13 performed by Employees and unpaid overtime compensation from at least four years prior to the
14 filing of this action, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, from at least four years prior to the filing of this action, according to proof;
- 17 4. For compensatory damages in the amount of all unpaid wages, including overtime
18 and double-time pay, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Employees
20 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
21 years prior to the filing of this action, as may be proven;
- 22 6. For compensatory damages in the amount of the hourly wage made by Employees
23 for each day requisite rest breaks were not provided or were deficiently provided where no
24 premium pay was paid therefor from at least four years prior to the filing of this action, as may be
25 proven;
- 26 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 27 8. For restitution and/or damages and penalties for Defendants' failure to pay all
28 wages due twice monthly under Labor Code § 204, as may be proven;

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

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

5 11. For damages and restitution for failure to reimburse all reasonable and necessary
6 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

7 12. For restitution for unfair competition pursuant to Business & Professions Code
8 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

13 15. For penalties under Labor Code § 558, as may be proven;

14 16. For other wages and penalties under the Labor Code as may be proven;

15 17. For all general, special, and incidental damages as may be proven;

16 18. For an award of pre-judgment and post-judgment interest;

17 19. For an award providing for the payment of the costs of this suit;

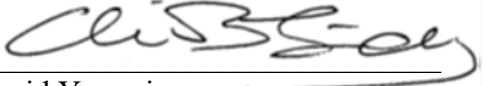
18 20. For an award of attorneys' fees; and

19 21. For such other and further relief as this Court may deem proper and just.
20

21 DATED: October 2, 2023

D.LAW, INC.
DAVID YEREMIAN & ASSOCIATES, INC.

22
23 By


David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff Rodrigo Galvan Flores
and all others similarly situated

DEMAND FOR JURY TRIAL

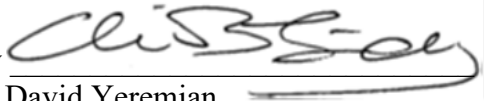
Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: October 2, 2023

D.LAW, INC.

DAVID YEREMIAN & ASSOCIATES, INC.

By

A handwritten signature in black ink, appearing to read "David Yerman", written over a horizontal line.

David Yerman

Alvin B. Lindsay

Attorneys for Plaintiff Rodrigo Galvan Flores
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Russell Cochran, Agent for Service of Process
STATE READY MIX, INC.
 11011 Azahar St., Ste 1
 Ventura, CA 93004

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Sasha Zambrano