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

13 DANIEL RUIZ, Individually and on
14 Behalf of All Others Similarly Situated,
15 and as an Aggrieved Employee,

16 Plaintiff,

17 vs.

18 DCCCA1, INC. D/B/A DOPPLEMAYR
19 CABLE CAR, a California Corporation,

20 Defendant.

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
10/19/2023

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

Case No. 23CV040128

COMPLEX CASE (CLASS ACTION)

FIRST AMENDED COMPLAINT FOR:

1. **FAILURE TO PAY PREVAILING WAGES, LAB. CODE §§ 1720 et seq.;**
2. **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS, LAB. CODE § 226.7;**
3. **FAILURE TO PROVIDE MEAL PERIODS, LAB. CODE §§ 226.7, 512;**
4. **FAILURE TO PROVIDE WAGES WHEN DUE, LAB. CODE §§ 201, 202, 203;**
5. **UNFAIR COMPETITION, BUSINESS & PROFESSIONS CODE §§ 17200-09; and**
6. **VIOLATIONS OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LAB. CODE §§ 2698 et seq.**

JURY TRIAL DEMANDED

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1 Plaintiff Daniel Ruiz (the “Plaintiff”), on behalf of himself and all others similarly situated,
2 and as an “aggrieved employee” under California Labor Code § 2699, alleges as follows:

3 **I. INTRODUCTION**

4 1. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings this class action
5 for wage and hour violations on behalf of himself and all other maintenance technicians who
6 performed work for Defendant DCCCA1, INC. d/b/a Dopplemayr Cable Car (hereinafter referred to
7 as “Dopplemayr” or “Defendant”) pursuant to Dopplemayr’s 20-year contract with the San Francisco
8 Bay Area Rapid Transit District (“BART”) for Operation and Maintenance of the Oakland
9 International Airport Connector (“OAC”) (the “OAC O&M Contract”).

10 2. Plaintiff seeks to recover unpaid prevailing wages, and unpaid employee benefits or
11 their value included in per diem wages mandated by California law, which he and members of the
12 proposed class (collectively, the “Plaintiffs”) are entitled to receive but did not receive for work they
13 performed on the OAC O&M Contract.

14 3. The California Prevailing Wage Law, Lab. Code §§ 1720 *et seq.* (“CPWL”), requires
15 that employers with public contracts pay their laborers, workers, and mechanics on public works
16 projects the general prevailing rate of per diem wages, including overtime at least at the rate of one
17 and one-half times the basic rate of pay, as determined by the Director of Industrial Relations. Lab.
18 Code §§ 1773, 1815; *see id.* § 510. Per diem wages include, among other things, employer payment
19 for health and welfare, pension, vacation, travel, and subsistence. *Id.* § 1773.1.

20 4. Workers who must be paid the prevailing rate of wages for public work include all
21 laborers, workers, or mechanics employed by contractors or subcontractors in the execution of any
22 contract for public work. *Id.* §§ 1723, 1772, 1774.

23 5. Plaintiff and the putative class members worked for Defendant as “maintenance
24 technicians” responsible for providing preventative and corrective maintenance and repair services
25 on the OAC system and fixed facilities.

26 6. For their work pursuant to the OAC O&M Contract, Defendant has paid Plaintiff and
27 the putative class members substantially lower than the prevailing rate of per diem wages applicable
28 to their work, in violation of the California Prevailing Wage Law.

7. In particular, throughout the relevant time period, commencing at least four (4) years prior to the filing of this action and continuing through the present, Defendant has failed to pay Plaintiffs prevailing wages for their work performing maintenance and repair on the OAC system and fixed facilities, despite the explicit contractual and statutory requirements in the OAC O&M Contract requiring that they do so.

8. In addition, Defendant regularly fails and, throughout the relevant time period, failed to provide Plaintiffs with off-duty, uninterrupted 30-minute meal periods and to authorize and permit off-duty 10-minute rest periods.

9. Defendant has committed additional wage and hour violations, during the relevant time period, including but not limited to failing to pay all wages due upon termination and/or separation from employment.

10. This class action asserts violations of California's Labor Code, Wage Orders, and Business and Professions Code arising from Defendant's unlawful conduct in carrying out the OAC O&M Contract. For these violations, Plaintiff, on behalf of himself and all others similarly situated, seek back wages, restitution, interest, injunctive and declaratory relief, and attorneys' fees and costs.

11. On a representative basis on behalf of the State of California and other current and former aggrieved employees, Plaintiff also seeks to recover penalties for Defendant's violations of the California Labor Code under California Labor Code Private Attorneys General Act of 2004, Lab. Code §§ 2698 *et seq.* ("PAGA").

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over the claims alleged herein pursuant to Lab. Code § 1194 and the California Constitution, Article VI, § 10. Jurisdiction is further proper in this Court because Plaintiff's claims all arise under the laws of the State of California, and all parties to this action are California residents.

13. Venue is proper in the County of Alameda, pursuant to California Code of Civil Procedure § 395.5. Plaintiff was employed by and performed work for Defendant in Alameda County, California, during the time period relevant to this Complaint. Defendant transacts business and is otherwise within this Court's jurisdiction for purposes of service of process.

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III. PARTIES

Plaintiff

14. Plaintiff Daniel Ruiz (“Ruiz”), at all times relevant to this Complaint, has been an adult individual residing in Contra Costa County, California.

15. Ruiz was employed by Defendant as a maintenance technician from approximately July 27, 2019 through approximately December 10, 2022.

16. Throughout Ruiz’s employment with Defendant, Ruiz has been paid on an hourly basis, at approximately \$25.00 per hour at the beginning of Ruiz’s employment and at approximately \$33.00 per hour at the end of his employment.

17. At no point during Ruiz’s employment with Defendant, regardless of which specific maintenance and/or repair task he performed on the OAC system and/or facilities, did Ruiz receive the applicable prevailing rate of per diem wages owed to him for such work.

18. Throughout Ruiz’s employment with Defendant, Ruiz performed maintenance and repair work for Defendant exclusively on the OAC project, pursuant to Defendant’s OAC O&M Contract.

19. Upon his separation from Dopplemayr in December 2022, Ruiz was not paid and has still not been paid all unpaid prevailing wages, benefits and premiums owed to him.

20. Plaintiff and members of the proposed class typically worked a full-time schedule of approximately forty (40) hours per week, consisting of day or night shifts of approximately eight (8) hours, and sometimes longer, and/or swing shifts of twelve (12) hours. Specifically, Ruiz typically worked Tuesday, Wednesday and Thursday, from 6:00 a.m. to 2:30 p.m. and Friday and Saturday, from 6:00 a.m. to 6:00 p.m.

21. Plaintiff and members of the proposed class are “Workers”, as defined by Lab. Code § 1723, who were “employed by a contractor or subcontractor in the execution of any contract for public work,” as defined by Lab. Code § 1772.

22. Plaintiff is an “aggrieved employee”, as defined by Lab. Code § 2699(c), since he was employed by Defendant and suffered one or more of the alleged Labor Code violations committed by Defendant.

1 **Defendant**

2 23. Defendant DCCCA1, Inc. doing business as “Dopplemayr Cable Car,” is a corporation
3 organized and existing under the laws of the State of California, with a principal office located at 70
4 Hegenberger Road, Oakland, CA 94621.

5 24. DCCCA1, Inc. was incorporated with the California Secretary of State on May 30,
6 2008.

7 25. During the relevant time period, DCCCA1, Inc. has also maintained an office at 3160
8 West 500 South, Salt Lake City, UT 84104.

9 26. DCCCA1, Inc. is a subsidiary of American parent company Doppelmayr Cable Car
10 America, Inc. and Austrian parent company Doppelmayr Cable Car GmbH & Co KG.

11 27. At all relevant times, Defendant contracted and entered into contracts, to perform
12 public work in California covered by the CPWL.

13 28. Defendant is, and at all times relevant to this Complaint was, an employer covered by
14 the California Labor Code and the California Industrial Welfare Commission Wage Order No. 4-2001
15 (Wage Order No. 4).

16 **IV. CLASS ACTION ALLEGATIONS**

17 **Unpaid Wage Class**

18 29. Pursuant to § 382 of the Code of Civil Procedure, Plaintiff brings his First through
19 Fourth Causes of Action on behalf of himself and the following class:

20 All individuals employed by DCCCA1, Inc. at any time within the four
21 (4) years prior to the filing of this Complaint through the date of the
22 final disposition of this action (“Class Period”) who have performed
23 maintenance and/or repair work on the BART Oakland International
24 Airport Connector system and/or fixed facilities pursuant to DCCCA1,
25 Inc.’s operations and maintenance contract with BART (the “Class” or
26 “Class Members”).

27 **Waiting Time Subclass**

1 30. Pursuant to § 382 of the Code of Civil Procedure, Plaintiff brings his Fifth Cause of
2 Action on behalf of himself and the following sub-class:

3 All Class Members whose employment with DCCCA1, Inc. ended at
4 any time during the period within three (3) years prior to the filing of
5 this action through the date of the final disposition of this action (the
6 “Subclass Members”).

7 31. Plaintiff’s claims are brought and may properly be maintained as a class action because
8 there is a well-defined community of interest among the Class with respect to the claims asserted and
9 the Class are easily ascertainable.

10 32. The Class and Subclass Members are readily ascertainable. The number and identity
11 of the Class and Subclass Members are determinable from the records of Defendant. For purposes of
12 notice and other purposes related to this action, their names and addresses are readily available from
13 Defendant. Notice can be provided by any means permissible under the rules of civil procedure and
14 local rules.

15 33. The Class and Subclass Members are so numerous that joinder of all members is
16 impracticable. Upon information and belief, there are in excess of seventy (70) Class Members and
17 forty (40) Subclass Members.

18 34. Common questions of law and fact exist as to all Class and Subclass Members that are
19 answerable on a common basis and such questions predominate over any questions solely affecting
20 individual Class and Subclass Members. Such common questions will generate common answers and
21 will determine Defendant’s liability to all (or nearly all) Class and Subclass Members. The common
22 questions include:

- 23 a. Whether Defendant employed Class and Subclass Members within the meaning of
24 the California Labor Code and Wage Order No. 4;
25 b. Whether Defendant failed to create and implement a reliable system ensuring the
26 payment of prevailing wages for covered work performed by Plaintiff and Class
27 Members when due;
28 c. Whether the work performed by Plaintiff and the Class Members on public works

1 projects, or any part thereof, requires payment of prevailing wages under Labor
2 Code § 1720 *et seq.*;

3 d. Whether Defendant failed and/or refused to pay Plaintiff and the Class Members
4 the prevailing rate of per diem wages on public works projects as required by the
5 CPWL;

6 e. Whether Defendant failed and/or refused to pay Plaintiff and the Class Members
7 the prevailing wage overtime premiums for work performed on public works
8 projects as required by the CPLW;

9 f. Whether the failure of Defendant to pay Plaintiff and Class Members the
10 minimum required wage under the CPLW for work on public projects has resulted
11 in Plaintiff and Class Members not being paid all wages due at the applicable
12 rates;

13 g. Whether Defendant has had a policy and practice of failing to provide an
14 uninterrupted 30-minute meal period for every five (5) hours worked, in violation
15 of Wage Order No. 16 § 10 and Labor Code §§ 226.7 and 512;

16 h. Whether Defendant has had a policy and practice of failing to provide a 10-minute
17 rest period for every four (4) hours or major fraction thereof worked, in violation
18 of Wage Order No. 16 § 11 and Labor Code § 226.7;

19 i. whether Defendant violated Cal. Lab. Code §§ 201-203 by failing to timely pay,
20 to Plaintiff and the Subclass Members, all wages due and owing upon termination
21 or within 72 hours of resignation; and

22 j. Whether Plaintiff and Class Members have lost money or property as a result of
23 Defendant's violations of Business and Professions Code §§ 17200 *et seq.*

24 35. Plaintiff's claims are typical of the Class and Subclass Members' claims. Plaintiff, like
25 all Class and Subclass Members, is or was employed by Defendant as a maintenance and repair
26 employee who worked for Defendant on their public works project pursuant to their corporate policies
27 and practices. Plaintiff, like all Class Members, was, *inter alia*, not paid the prevailing rate of per
28 diem wages for work performed on the public works project, was not permitted an off-duty 10-minute

1 rest break, and was not permitted an off-duty 30-minute meal break. Plaintiff, like all Subclass
2 Members, was, *inter alia*, not provided all wages owed to them at termination of their employment.
3 If Defendants are liable to Plaintiff for the claims enumerated in this Complaint, they are also liable
4 to all Class and Subclass Members.

5 36. Plaintiff and his Counsel will fairly and adequately represent the Class and Subclass
6 Members. There are no conflicts between Plaintiff and the Class and Subclass Members, and Plaintiff
7 brings this lawsuit out of a desire to help all Class and Subclass Members, not merely out of a desire
8 to recover his own damages.

9 37. Plaintiff's counsel are experienced class action litigators who are well-prepared to
10 represent the interests of the Class and Subclass Members.

11 38. A class action is superior to other available methods for the fair and efficient
12 adjudication of this litigation. Requiring each Class and Subclass Member to pursue her or his claims
13 individually would entail needless duplication, might result in inconsistent judgments, and would
14 waste the resources of both the parties and the judiciary. Moreover, the financial burden of proving
15 that Defendant violated the law as alleged herein also would make the prosecution of individual
16 actions virtually impossible for most, if not all members of the classes.

17 V. ADDITIONAL FACTUAL ALLEGATIONS

18 **Defendant's BART OAC Operations & Maintenance Contract Is Public Work.**

19 39. In 2009, BART awarded two contracts for the OAC project under a design-build-
20 operate-maintain (DBOM) procurement model: (1) a design-build contract pertaining to the
21 construction of the OAC – i.e., Contract No. 01ZK-110 (the “Design-Build Contract”); and (2) the
22 OAC O&M Contract (Contract No. 01ZK-120), pertaining to the operation and maintenance of the
23 completed OAC system, to be performed over a 20-year period (altogether, the “OAC Project”).
24 Dopplemayr was a sub-contractor on the Design-Build Contract responsible for installing the
25 ropeway, guideways, and cable liner vehicles. The construction of the OAC system pursuant to the
26 Design-Build Contract was completed in November 2014, at which point Dopplemayr's operations
27 and maintenance of the OAC system commenced, pursuant to the OAC O&M Contract.

1 40. The OAC O&M Contract portion of the OAC Project, was and is publicly funded,
2 primarily through state and local funds and fare collections.

3 41. BART maintains ownership of the OAC system and retains the right to oversee and
4 control the functioning of the OAC system and fixed facilities.

5 42. Through its explicit terms, as set forth in the “General Conditions” and
6 “Supplementary Conditions,” the OAC O&M Contract requires Dopplemayr to comply with the
7 CPWL by paying not less than the prevailing rate of wages to all workers employed on the project.

8 43. While the most common definition of “public works” is construction, alteration,
9 demolition, installation or repair work done under contract and paid for in whole or in part out of
10 public funds (Lab. Code § 1720, subd. (a)(1)), the CPWL also expressly applies to “contracts let for
11 maintenance work.” (Lab. Code § 1771; *Reliable Tree Experts v. Baker*, 200 Cal. App. 4th 785, 795-
12 796 [2011]; *See also Reclamation Dist. No. 684 v. State Dept. of Industrial Relations*, 125
13 Cal.App.4th 1000, 1005, n. 6, 23 Cal.Rptr.3d 269, 272 [Cal.Ct.App. 2005] (“maintenance work is
14 within the general definition of public works.”)).

15 44. Under Lab. Code § 1771 and its implementing regulation, “maintenance” is defined
16 as:

17 (1) Routine, recurring and usual work for the preservation, protection
18 and keeping of any publicly owned or publicly operated facility
19 (plant, building, structure, ground facility, utility system or any real
20 property) for its intended purposes in a safe and continually usable
21 condition for which it has been designed, improved, constructed,
22 altered or repaired.

23 (2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and
24 other craft work designed to preserve the publicly owned or publicly
25 operated facility in a safe, efficient and continuously usable
26 condition for which it was intended, including repairs, cleaning and
27 other operations on machinery and other equipment permanently
28 attached to the building or realty as fixtures.

1 (Cal. Code Regs., tit. 8, § 16000).

2 45. The “Scope of Work” for the OAC O&M Contract includes various maintenance and
3 repair obligations required of Dopplemayr to ensure “the uninterrupted and safe operation and
4 maintenance of the OAC System.” Specifically, Dopplemayr is responsible for “the maintenance of
5 all Operating System Equipment and Fixed Facilities supplied, installed, and constructed under the
6 Design-Build Contract including cleaning and preventive, corrective, and major maintenance on all
7 OAC System components.” A non-exhaustive list of such maintenance and repair tasks for the OAC
8 System, includes repair and replacement of damages parts, components and materials, and routine,
9 scheduled, non-scheduled, reasonable wear/tear and other maintenance on: vehicles and on-board
10 equipment; power distribution systems; command, control and communications equipment;
11 guideway structures and equipment; stations and station equipment; maintenance and storage facility
12 and equipment; elevators and escalators; among others.

13 **Plaintiff and Class Members Performed Covered Work for Dopplemayr**

14 46. As maintenance technicians, Plaintiff and Class Members were responsible for
15 carrying out the numerous routine, preventative, and emergency maintenance and repair tasks
16 required by the OAC O&M Contract to ensure the safe and continually usable operation of the OAC
17 system and facilities for which they were constructed.

18 47. Specifically, Plaintiff and the Class Members performed daily, weekly, monthly,
19 quarterly and annual inspection, maintenance and repair tasks, in accordance with a Maintenance Plan
20 developed between Dopplemayr and BART, pursuant to the OAC O&M Contract.

21 48. For example, Plaintiff and Class Members performed inspections and repairs to realign
22 the tracks and guideway, rebuild and replace the sheaves/pulley system, the bull wheels, springs,
23 shocks, rubber wheels and other parts of the automated people mover vehicles, perform maintenance
24 on the pulley system, including the gears/gearbox, switches and sensors, inspect and repair gears and
25 handrails on the escalators and elevators, among many other inspection, maintenance and repair tasks.

26 49. The California Department of Industrial Relations (“DIR”) has consistently
27 determined that routine maintenance, repairs, testing and inspection work, of the types performed by
28 Plaintiff and Class Members on the OAC Project, is covered by the CPWL and should be compensated

1 at prevailing wage rates. E.g., Public Works Case No. 2019-021 (preventative maintenance service
2 and inspections on fire systems); Public Works Case No. 2018-016 (preventative maintenance on a
3 building automation system); Public Works Case No. 2015-016 (inspection and maintenance of water
4 quality testing and analytical equipment); Public Works Case No. 2015-012 (fire alarm and sprinkler
5 system testing, inspection and maintenance work); Public Works Case No. 2006-004 (inspection,
6 cleaning, and resetting of signal controllers and monthly maintenance), among others.

7 50. The DIR also determines the prevailing rate of pay for a given “craft, classification, or
8 type of work” and publishes these rates such that contractors and subcontractors are deemed to have
9 constructive notice of the applicable prevailing wage rates. Lab. Code § 1773; *Division of Labor*
10 *Standards Enforcement v. Ericsson Information Systems*, 221 Cal.App.3d 114, 125 (1990).

11 51. According to the OAC O&M Contract, the OAC system is an “automated people
12 mover” within an exclusive right-of-way that operates without drivers or attendants on vehicles and
13 which is powered by a cable-propelled technology.

14 52. The DIR’s Scope of Work for the trade classification “Elevator Constructor” in
15 Alameda County covers work on “automated people movers” (*see* Article IV, Par. 2(b)) including but
16 not limited to “general repairs” such as: realigning guide rails, rescoring of sheaves and drums,
17 replacement of worm and gears, rewiring or reinstalling limit switches, renewing of car shoes or roller
18 guides, among many others. *See* [https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-](https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-X-1-Sco.pdf)
19 [X-1-Sco.pdf](https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-X-1-Sco.pdf). As set forth in paragraph 45 *supra*, these are the types of maintenance and repair tasks
20 performed by Plaintiff and Class Members on the OAC systems and facilities.

21 53. Upon information and belief, the applicable prevailing wage rate for the work
22 performed by Plaintiff and Class Member was approximately \$83.73, including benefits.¹

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27 ¹ This represents the prevailing wage rate applicable to the “Elevator Constructor” craft in effect when
28 the OAC O&M Contract was bid in May 2009, with predetermined yearly increases of \$3.00 allocated
to wages and/or employer payments through 2012. The prevailing wage rates applicable to each craft
in Alameda County for each year during the relevant time period are available on the DIR website at:
<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

1 54. At all times relevant, Plaintiff and Class Members received pay rates and benefits
2 substantially lower than the prevailing rate of per diem wages applicable to the work they performed
3 on the OAC O&M Contract.

4 **Plaintiff and Class Members Were Not Provided Uninterrupted Meal or Rest Breaks**

5 55. Due to Dopplemayr's scheduling of maintenance technicians, including Plaintiff and
6 Class Members, and the time-sensitive nature of ensuring that the OAC system was properly running
7 to transport passengers during its scheduled service hours, Plaintiff and Class Members were
8 frequently interrupted while on their 10-minute rest break and/or 30-minute lunch break in order to
9 inspect and troubleshoot a service interruption.

10 56. While Dopplemayr's company policy² requires that Plaintiff and Class Members clock
11 out at the beginning of the lunch break and clock back in at the end of their lunch break, during which
12 time they are permitted to not respond to their radio, in practice, throughout the relevant time period,
13 when a service interruption took place or takes place, Dopplemayr's management has required that
14 Plaintiff and Class Members immediately address a service interruption and continue to work until
15 the service is restored, regardless of whether they were provided a required rest or lunch break or
16 were already clocked out for a lunch break. If such breaks were interrupted, Plaintiff and Class
17 Members were not permitted to "make up" the full missed break at a later time during their shift, but
18 rather are only provided the balance of the break time that was interrupted, if at all. These service
19 interruptions took place at least once per week, and often times more frequently when it was raining.

20 57. In addition, throughout the relevant time period, Dopplemayr regularly only scheduled
21 one maintenance technician during the swing shift on Friday to Saturday or Sunday to Monday, such
22 that there was no "coverage" for the maintenance technician to be relieved of all duty for the rest
23 and/or lunch break in the event of a service interruption or other urgent issue with the OAC system.

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28 ² Plaintiff is informed and believes that prior to his commencing work for Dopplemayr in 2019, as a
result of an investigation or litigation, Dopplemayr changed their previous written break policy to
ensure that it was compliant with the law in terms of permitting uninterrupted breaks.

1 58. Further, pursuant to Dopplemayr's uniform practice, Plaintiff and Class Members who
2 worked the swing shift of twelve (12) hours or any shifts in excess of ten (10) hours also were not
3 permitted a second, 30-minute uninterrupted lunch break, or a third, 10-minute rest break.

4 59. Plaintiff and Class Members did not voluntarily waive or skip their rest and/or meal
5 breaks but instead were pressured to do so by Dopplemayr to ensure the OAC system was fully
6 operational at all times during service hours.

7 60. The frequent interruption of breaks and pressure from Dopplemayr management to
8 work through a break and/or return to work despite being on a break and/or not providing required
9 breaks, is, in part, a function of the strict operations requirements and related financial incentives of
10 the OAC O&M Contract. For example, Dopplemayr's monthly compensation is directly impacted by
11 the amount of "down time" of the OAC system and the escalator/elevators, through both an
12 "escalator/elevator downtime adjustment" and an "accumulated System Downtime deduction."
13 Accordingly, if Dopplemayr permitted Plaintiff and Class Members to take their full rest and meal
14 breaks without interruption to troubleshoot and restore service to the OAC system, that would result
15 in more down time for the system and less pay for Dopplemayr. Consequently, the pressure from
16 Dopplemayr and the underlying financial incentives for restoring service to the OAC system as soon
17 as possible, resulted in Plaintiff and Class Members not being permitted uninterrupted rest and meal
18 breaks.

19 61. When Plaintiff and Class Members were not permitted an uninterrupted rest and/or
20 meal break, Dopplemayr failed to pay Plaintiff and Class Members premium pay for such denied
21 breaks.

22 **Plaintiff and Subclass Members Were Not Paid All Wages Owed At Separation**

23 62. Dopplemayr has had a policy and practice of not paying all earned wages to Plaintiff
24 and Subclass Members, including prevailing wages and benefits and missed meal period and rest
25 period premium pay, due either upon termination or within 72 hours of an unnoticed quit.

26 63. Dopplemayr's failure to pay all wages due when owed was willful, given that
27 Dopplemayr was on notice that they owed prevailing wages to workers on the OAC Project, such as
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1 Plaintiff and Class Members, as detailed in the OAC O&M Contract, but chose to ignore such
2 requirements and pay Plaintiff and Class Members a lower, non-prevailing wage rate for their work.

3 **Plaintiff Exhausted Administrative Remedies Under PAGA**

4 64. Plaintiff complied with the procedures for bringing suit specified in Labor Code §
5 2699.3. By certified letter, return receipt requested, dated August 9, 2023, Plaintiff gave written notice
6 to the Labor and Workforce Development Agency (“LWDA”) and to Defendant of the specific
7 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
8 the alleged violations, and paid the required fee. See Exhibit #1, attached hereto and incorporated by
9 reference herein.

10 65. As of October 18, 2023, more than sixty-five (65) days after serving the LWDA with
11 the notice of Defendant’s violations, the LWDA has not provided any notice by certified mail of its
12 intention to investigate the Defendant’s alleged violations as mandated by Labor Code §
13 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiff is authorized to
14 pursue his PAGA cause of action.

15 **VI. CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY PREVAILING WAGES**

18 **IN VIOLATION OF LABOR CODE §§ 1720 et seq.**

19 **(Brought On Behalf of Plaintiff and Class Members)**

20 66. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
21 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
22 forth herein.

23 67. Defendant contracted to perform public work in the State of California on a public
24 works project covered by the California Prevailing Wage Law.

25 68. Plaintiff and Class Members were workers employed by Defendant to perform work
26 in the execution of such public work.

69. During the Class Period, Defendant has failed and refused to pay Plaintiff and Class Members the prevailing rate of per diem wages, including overtime and the value of employee benefits included in the per diem wages, as required by the California Prevailing Wage Law.

70. Defendant knew or should have known that Plaintiff and Class Members at all times performed work for which they should have been paid at the prevailing rate of per diem wages.

71. Defendant's acts and omissions in this regard are willful and not in good faith, and are without reasonable grounds for believing that the alleged acts and omissions are in compliance with the California Prevailing Wage Law.

72. As a result of Defendant's acts and omissions in violation of the California Prevailing Wage Law, Plaintiff and Class Members have suffered, and continue to suffer, monetary injury.

73. Declaratory and injunctive relief is necessary and appropriate to ensure that Defendant ceases violating the California Prevailing Wage Law.

74. Plaintiff and Class Members are entitled to recover the unpaid balance of the prevailing rate of per diem wages earned, plus interest and reasonable attorneys' fees and costs of this action, pursuant to Cal. Lab. Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

IN VIOLATION OF LABOR CODE § 226.7 and WAGE ORDER NO. 16

(Brought On Behalf of Plaintiff and Class Members)

75. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

76. Pursuant to Wage Order No. 16 § 11, “[e]very employer shall authorize and permit all employees to take rest periods . . . based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

77. Labor Code § 226.7(b) states: “If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission,

1 the employer shall pay the employee one additional hours or pay at the employee's regular rate of
2 compensation for each work day that the meal or rest period is not provided."

3 78. During the Class Period, Defendant has had a policy and practice of failing to permit
4 and authorize required rest periods and not pay the related premium of one hour of additional pay at
5 the regular rate of compensation for each workday that the compliant rest periods were not permitted
6 or authorized.

7 79. Defendant knew or should have known that Plaintiff and Class Members were not
8 authorized and permitted to take, and in fact did not take, rest periods throughout the relevant time
9 period, based on their practice of requiring Plaintiff and Class Members to assist with service
10 interruptions when Plaintiff and Class Members were on a rest break in order to ensure as limited
11 down time of the system as possible.

12 80. As a result of Defendant's failure to permit and authorize Plaintiff and Class Members
13 to take required rest periods, they are all liable to Plaintiff and other member of the Class for one hour
14 of additional pay at the regular rate of compensation for each workday that the required rest periods
15 were not provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§ 226.7, 218.5,
16 and 1194, and Wage Order No. 16.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

19 **IN VIOLATION OF LABOR CODE §§ 226.7, 512 and WAGE ORDER NO. 16**

20 **(Brought On Behalf of Plaintiff and Class Members)**

21 81. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
22 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
23 forth herein.

24 82. Labor Code §§ 512 and Wage Order No. 16 § 10(A) require that an employer provide
25 a meal period of at least 30 minutes in which each employee is relieved of all duty for every five (5)
26 hours worked. Wage Order No. 16 § 10(B) requires that an employer must provide a second meal
27 period of no fewer than 30 minutes for all workdays on which an employee works more than ten (10)
28 hours

1 83. Labor Code § 226.7(b) states: “If an employer fails to provide an employee a meal
2 period or rest period in accordance with an applicable order of the Industrial Welfare Commission,
3 the employer shall pay the employee one additional hours or pay at the employee’s regular rate of
4 compensation for each work day that the meal or rest period is not provided.”

5 84. During the Class Period, Defendant has had a policy and practice of failing to provide
6 required meal periods and not pay the related premium of one hour of additional pay at the regular
7 rate of compensation for each workday that the compliant meal periods were not provided.

8 85. Defendant knew or should have known that Plaintiff and Class Members were not
9 authorized and permitted to take, and in fact did not take, uninterrupted 30-minute meal periods
10 throughout the relevant time period, based on their practice of requiring Plaintiff and Class Members
11 to assist with service interruptions when Plaintiff and Class Members were on a meal break in order
12 to ensure as limited down time of the system as possible.

13 86. As a result of Defendant’s failure to provide Plaintiff and Class Members to take
14 required uninterrupted 30-minute meal periods, they are all liable to Plaintiff and other member of
15 the Class for one hour of additional pay at the regular rate of compensation for each workday that the
16 required meal periods were not provided, attorneys’ fees, penalties, and interest, pursuant to Labor
17 Code §§ 226.7, 512, and 1194, and Wage Order No. 16.

18 **FOURTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

20 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et seq.**

21 **(Brought On Behalf of Plaintiff and Class Members)**

22 87. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
23 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
24 forth herein.

25 88. Throughout the relevant time period, through Defendant’s acts and omissions alleged
26 herein, Defendant committed and continues to commit unlawful acts that violated and continue to
27 violate Business and Professions Code §§ 17200 et seq.

89. Defendant's unlawful acts include violating the California Labor Code, as alleged herein.

90. Defendant's violations of this statute and wage and hour law constitute a business practice because Defendant's aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systemic manner, to the detriment of Plaintiff and Class Members.

91. As a result of Defendant's unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class Period at the expense of Plaintiff, Class Members, and members of the public. Defendant should be made to disgorge their ill-gotten gains to restore them to Plaintiff and Class Members.

92. As a result of the aforementioned acts, Plaintiff and the Class have lost and continue to lose money or property, and have suffered and continue to suffer injury in fact. Defendant continues to hold unpaid wages and other funds legally belonging to Plaintiff and the Class.

93. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions Code §§ 17203 and 17208 for, among other things, all unpaid prevailing wages, including overtime and fringe benefits, and interest since four (4) years prior to the filing of the Complaint.

94. Pursuant to Business and Professions Code § 17203, Plaintiff and similarly situated aggrieved employees and entitled to and seek injunctive relief against Defendant's continuation of the unlawful and unfair business practices described herein.

95. Plaintiff and the Class are entitled to restitution in the amounts unlawfully withheld by Defendants, with interest, injunctive relief, and an award of attorneys' fees and costs. *See Cortez v. Purolator Air Filtration Products Co.*, (2000) 23 Cal.4th 163, 177 (UCL authorizes, as restitution, order for payment of unlawfully withheld wages).

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION

IN VIOLATION OF LABOR CODE §§ 201, 202, 203

(Brought On Behalf of Plaintiff and Subclass Members)

96. Plaintiff, on behalf of himself and the Subclass Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

97. Labor Code §§ 201 and 202 require Defendant to pay their employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

98. Labor Code § 203 provides that if an employer willfully fails to pay compensations promptly upon separation, as required by §§ 201 or 202, then the employer is liable for waiting time penalties in the form of one day of wages for up to 30 days.

99. Throughout the relevant time period, as a result of Defendant's wage and hour violations set forth above, Defendant has failed to pay all earned wages to Plaintiff and Subclass Members who have separated from Defendants during the four (4) years prior to the filing of the Complaint and continuing through the present.

100. As a result of Defendant's willful failure to pay all wages due to Plaintiff and Subclass Members following separation from employment with Defendant, Defendant is liable to Plaintiff and Subclass Members who have separated from their employment with Defendant an additional sum equal to a day's wages for thirty (30) days, plus interest, in amounts to be proven at trial, attorneys' fees, and costs, pursuant to Labor Code § 203.

SIXTH CAUSE OF ACTION

FOR CIVIL PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT

PURSUANT TO CAL. LAB. CODE §§ 2698 *et seq.*

(Brought on Behalf of Plaintiff and All Aggrieved Employees)

101. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

102. On a representative basis on behalf of the State of California, Plaintiff seeks recovery of penalties under PAGA.

103. Labor Code § 2699(a) and (g) authorize an aggrieved employee, like Plaintiff, to recover penalties on behalf of himself and other current or former employees as a result of an

1 employer's violations of the California Labor Code, pursuant to the procedures specified in Labor
2 Code § 2699.3.

3 104. As set forth above and in the attached notice to the LWDA, Defendant has violated the
4 California Labor Code, including but not limited to, Lab. Code §§ 201, 202, 203, 226.7, 512, 1194,
5 1774, and 1776.

6 105. Plaintiff and members of the Class who worked for Defendant during the relevant
7 statutory period are aggrieved employees because they are and/or were employed by the alleged
8 violator and the alleged violations were committed against them.

9 106. For all provisions of the Labor Code for which a civil penalty is not specifically
10 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for
11 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
12 each aggrieved employee per pay period for each subsequent violation. Plaintiff and the other
13 aggrieved employees are entitled to an award of reasonable attorneys' fees and costs in connection
14 with their claims for civil penalties pursuant to Labor Code § 2699(g)(1).

15 107. To the extent that any of the conduct and violations alleged herein did not affect the
16 Plaintiff during the relevant statutory period, Plaintiff seeks penalties for those violations that affected
17 other aggrieved employees. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th
18 745, 751 ("PAGA allows an 'aggrieved employee' – a person affected by at least one Labor Code
19 violation committed by an employer – to pursue penalties for all the Labor Code violations committed
20 by that employer.").

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- 23 A. Certification of this action as a class action pursuant to § 382 of the Code of Civil
24 Procedure on behalf of the proposed Class and Subclass, appointing Plaintiff and
25 their Counsel to represent the Class and Subclass Members;
- 26 B. An award of unpaid prevailing wages and benefits, and meal and rest period
27 premiums, owed to Plaintiff and the Class Members, in an amount to be
28 determined at trial;

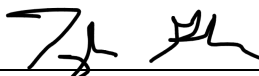
- 1 C. An award of waiting time penalties for Plaintiff and the Subclass Members, in an
2 amount to be determined at trial;
- 3 D. An award of restitution of all monies due to Plaintiff and Class Members, as well
4 as disgorged profits from the unfair and unlawful business practices of Defendant;
- 5 E. An award of civil penalties for all aggrieved employees pursuant to the Labor Code
6 under the Private Attorneys General Act;
- 7 F. Pre-judgment interest;
- 8 G. Declaratory relief;
- 9 H. Reasonable attorneys' fees and costs; and
- 10 I. For such further relief that the Court may deem just and proper.
- 11

12 DATED: October 18, 2023

Respectfully submitted,

13 **PELTON GRAHAM LLP**

14 By:



15 Taylor B. Graham

16 *Attorneys for Plaintiff and the Proposed Classes*

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DEMAND FOR JURY TRIAL

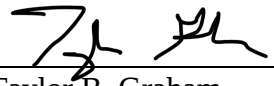
Plaintiff hereby demands a jury trial with respect to all issues triable of right to a jury.

DATED: October 18, 2023

Respectfully submitted,

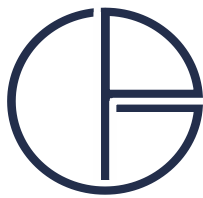
PELTON GRAHAM LLP

By:



Taylor B. Graham
Attorneys for Plaintiff and the Proposed Classes

EXHIBIT 1



PELTON GRAHAM LLP

ADVOCATES FOR JUSTICE

August 9, 2023

Taylor B. Graham, Esq.
Graham@PeltonGraham.com

VIA ELECTRONIC SUBMISSION

California Labor & Workforce Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
<http://dir.tfaforms.net/308>

**Re: Private Attorneys General Act (PAGA) Claim Notice
Pursuant to Cal. Lab. Code § 2699.3**

Dear Sir/Madam:

Our offices represent plaintiffs Daniel Ruiz (the “Plaintiff”), and a proposed class of other aggrieved employees (collectively, the “Plaintiffs”) in a lawsuit against DCCCA1, Inc. d/b/a Dopplemayr Cable Car (“Dopplemayr” or the “Defendant”). Plaintiffs were employed by Defendant as maintenance technicians performing laborer, workmen, and/or mechanic work on a public works project for which Dopplemayr contracted with the San Francisco Bay Area Rapid Transit District (BART) during the statutory period. For their work on the public works project, however, Defendant did not compensate them at the required prevailing wage rate of per diem wages. Said conduct, in addition to the foregoing, violates Labor Code §§ 1194, 1774, and 1776. In addition, Defendant failed to authorize and permit Plaintiffs uninterrupted rest breaks and failed to provide uninterrupted 30-minute meal breaks, in violation of Labor Code §§ 226.7, 512, and also failed to fully compensate Plaintiffs who separated from their employment with all unpaid wages owed, in violation of Labor Code §§ 201, 202, 203. These Labor Code violations by Defendant are actionable under Cal. Lab. Code § 2699.3

A copy of the Complaint filed by Plaintiff against Defendant in the Superior Court of the State of California, County of Alameda, Case No. 23CV040128 (the “Complaint”), is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the violations, events, projects, actions and omissions which are at issue to the extent known by Plaintiffs, and (v) sets forth the illegal practices used by Defendants. This information provides notice to the California Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiffs therefor incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs further information, please do not hesitate to ask.

This notice is provided to enable the Plaintiff to proceed with his Complaint against Defendant as authorized by Cal. Lab. Code § 2698, *et seq.* As counsel to the Plaintiff and proposed class of other aggrieved employees, our intention is to vigorously prosecute the claims as alleged

New York: 111 Broadway, Suite 1503, New York, NY 10006 Tel. 212-385-9700 Fax 212-385-0800
San Francisco: 220 Montgomery Street, Suite 2100, San Francisco, CA 94104 Tel. 415-437-9100

www.PeltonGraham.com

in the Complaint, and to procure civil penalties as provided by the Labor Code Private Attorneys General Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

We appreciate your attention to this matter. Please feel free to contact the undersigned with any questions or concerns.

Respectfully submitted,

/s/ Taylor B. Graham

Taylor B. Graham, Esq. of
PELTON GRAHAM LLP

Enclosure

cc: DCCCA1, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive
Suite 150N
Sacramento, CA 95833
(via Certified Mail)

Taylor B. Graham, Esq. (SBN 331398)
Brent E. Pelton, Esq. (SBN 224193)
PELTON GRAHAM LLP
220 Montgomery Street, Suite 2100
San Francisco, CA 94104
Telephone: 415-437-9100
Facsimile: 212-385-0800
Email: graham@peltingraham.com
pelton@peltingraham.com

Attorneys for Plaintiff and the Proposed Classes

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
08/07/2023 at 12:00:00 AM
By: Darnekia Oliver,
Deputy Clerk

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

DANIEL RUIZ, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

DCCCA1, INC., a California
Corporation, D/B/A DOPPLEMAYR
CABLE CAR,

Defendant.

Case No. **23CV040128**

COMPLEX CASE (CLASS ACTION)

COMPLAINT FOR:

- 1. FAILURE TO PAY PREVAILING WAGES, LAB. CODE §§ 1720 et seq.;**
- 2. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS, LAB. CODE § 226.7;**
- 3. FAILURE TO PROVIDE MEAL PERIODS, LAB. CODE §§ 226.7, 512;**
- 4. FAILURE TO PROVIDE WAGES WHEN DUE, LAB. CODE §§ 201, 202, 203;**
- 5. UNFAIR COMPETITION, BUSINESS & PROFESSIONS CODE §§ 17200-09.**

JURY TRIAL DEMANDED

Plaintiff Daniel Ruiz (the "Plaintiff"), on behalf of himself and all others similarly situated, alleges as follows:

I. INTRODUCTION

1. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings this class action for wage and hour violations on behalf of himself and all other maintenance technicians who

1 performed work for Defendant DCCCA1, INC. d/b/a Dopplemayr Cable Car (hereinafter referred to
2 as “Dopplemayr” or “Defendant”) pursuant to Dopplemayr’s 20-year contract with the San Francisco
3 Bay Area Rapid Transit District (“BART”) for Operation and Maintenance of the Oakland
4 International Airport Connector (“OAC”) (the “OAC O&M Contract”).

5 2. Plaintiff seeks to recover unpaid prevailing wages, and unpaid employee benefits or
6 their value included in per diem wages mandated by California law, which he and members of the
7 proposed class (collectively, the “Plaintiffs”) are entitled to receive but did not receive for work they
8 performed pursuant to the OAC O&M Contract.

9 3. The California Prevailing Wage Law, Lab. Code §§ 1720 *et seq.* (“CPWL”), requires
10 that employers with public contracts pay their laborers, workers, and mechanics on public works
11 projects the general prevailing rate of per diem wages, including overtime at least at the rate of one
12 and one-half times the basic rate of pay, as determined by the Director of Industrial Relations. Lab.
13 Code §§ 1773, 1815; *see id.* § 510. Per diem wages include, among other things, employer payment
14 for health and welfare, pension, vacation, travel, and subsistence. *Id.* § 1773.1.

15 4. Workers who must be paid the prevailing rate of wages for public work include all
16 laborers, workers, or mechanics employed by contractors or subcontractors in the execution of any
17 contract for public work. *Id.* §§ 1723, 1772, 1774.

18 5. Plaintiff and the putative class members worked for Defendant as “maintenance
19 technicians” responsible for providing preventative and corrective maintenance and repair services
20 on the OAC system and fixed facilities.

21 6. For their work pursuant to the OAC O&M Contract, Defendant has paid Plaintiff and
22 the putative class members substantially lower than the prevailing rate of per diem wages applicable
23 to their work, in violation of the California Prevailing Wage Law.

24 7. In particular, throughout the relevant time period, commencing at least four (4) years
25 prior to the filing of this action and continuing through the present, Defendant has failed to pay
26 Plaintiffs prevailing wages for their work performing maintenance and repair on the OAC system and
27 fixed facilities, despite the explicit contractual and statutory requirements in the OAC O&M Contract
28 requiring that they do so.

1 8. In addition, Defendant regularly fails and, throughout the relevant time period, failed
2 to provide Plaintiffs with off-duty, uninterrupted 30-minute meal periods and to authorize and permit
3 off-duty 10-minute rest periods.

4 9. Defendant has committed additional wage and hour violations, during the relevant
5 time period, including but not limited to failing to pay all wages due upon termination and/or
6 separation from employment.

7 10. This class action asserts violations of California's Labor Code, Wage Orders, and
8 Business and Professions Code arising from Defendant's unlawful conduct in carrying out the OAC
9 O&M Contract. For these violations, Plaintiff, on behalf of himself and all others similarly situated,
10 seek back wages, restitution, interest, injunctive and declaratory relief, and attorneys' fees and costs.

11 **II. JURISDICTION AND VENUE**

12 11. This Court has jurisdiction over the claims alleged herein pursuant to Lab. Code §
13 1194 and the California Constitution, Article VI, § 10. Jurisdiction is further proper in this Court
14 because Plaintiff's claims all arise under the laws of the State of California, and all parties to this
15 action are California residents.

16 12. Venue is proper in the County of Alameda, pursuant to California Code of Civil
17 Procedure § 395.5. Plaintiff was employed by and performed work for Defendant in Alameda County,
18 California, during the time period relevant to this Complaint. Defendant transacts business and is
19 otherwise within this Court's jurisdiction for purposes of service of process.

20 **III. PARTIES**

21 **Plaintiff**

22 13. Plaintiff Daniel Ruiz ("Ruiz"), at all times relevant to this Complaint, has been an
23 adult individual residing in Contra Costa County, California.

24 14. Ruiz was employed by Defendant as a maintenance technician from approximately
25 July 27, 2019 through approximately December 10, 2022.

26 15. Throughout Ruiz's employment with Defendant, Ruiz has been paid on an hourly
27 basis, at approximately \$25.00 per hour at the beginning of Ruiz's employment and at approximately
28 \$33.00 per hour at the end of his employment.

1 16. At no point during Ruiz’s employment with Defendant, regardless of which specific
2 maintenance and/or repair task he performed on the OAC system and/or facilities, did Ruiz receive
3 the applicable prevailing rate of per diem wages owed to him for such work.

4 17. Throughout Ruiz’s employment with Defendant, Ruiz performed maintenance and
5 repair work for Defendant exclusively on the OAC project, pursuant to Defendant’s OAC O&M
6 Contract.

7 18. Upon his separation from Dopplemayr in December 2022, Ruiz was not paid and has
8 still not been paid all unpaid prevailing wages, benefits and premiums owed to him.

9 19. Plaintiff and members of the proposed class typically worked a full-time schedule of
10 approximately forty (40) hours per week, consisting of day or night shifts of approximately eight (8)
11 hours, and sometimes longer, and/or swing shifts of twelve (12) hours. Specifically, Ruiz typically
12 worked Tuesday, Wednesday and Thursday, from 6:00 a.m. to 2:30 p.m. and Friday and Saturday,
13 from 6:00 a.m. to 6:00 p.m.

14 20. Plaintiff and members of the proposed class are “Workers”, as defined by Lab. Code
15 § 1723, who were “employed by a contractor or subcontractor in the execution of any contract for
16 public work,” as defined by Lab. Code § 1772.

17 **Defendant**

18 21. Defendant DCCCA1, Inc. doing business as “Dopplemayr Cable Car,” is a corporation
19 organized and existing under the laws of the State of California, with a principal office located at 70
20 Hegenberger Road, Oakland, CA 94621.

21 22. DCCCA1, Inc. was incorporated with the California Secretary of State on May 30,
22 2008.

23 23. During the relevant time period, DCCCA1, Inc. has also maintained an office at 3160
24 West 500 South, Salt Lake City, UT 84104.

25 24. DCCCA1, Inc. is a subsidiary of American parent company Doppelmayer Cable Car
26 America, Inc. and Austrian parent company Doppelmayer Cable Car GmbH & Co KG.

27 25. At all relevant times, Defendant contracted and entered into contracts, to perform
28 public work in California covered by the CPWL.

1 26. Defendant is, and at all times relevant to this Complaint was, an employer covered by
2 the California Labor Code and the California Industrial Welfare Commission Wage Order No.
3 16-2001 (Wage Order No. 16).

4 **IV. CLASS ACTION ALLEGATIONS**

5 **Unpaid Wage Class**

6 27. Pursuant to § 382 of the Code of Civil Procedure, Plaintiff brings his First through
7 Fourth Causes of Action on behalf of himself and the following class:

8 All individuals employed by DCCCA1, Inc. at any time within the four
9 (4) years prior to the filing of this Complaint through the date of the
10 final disposition of this action (“Class Period”) who have performed
11 maintenance and/or repair work on the BART Oakland International
12 Airport Connector system and/or fixed facilities pursuant to DCCCA1,
13 Inc.’s operations and maintenance contract with BART (the “Class” or
14 “Class Members”).

15 **Waiting Time Subclass**

16 28. Pursuant to § 382 of the Code of Civil Procedure, Plaintiff brings his Fifth Cause of
17 Action on behalf of himself and the following sub-class:

18 All Class Members whose employment with DCCCA1, Inc. ended at
19 any time during the period within three (3) years prior to the filing of
20 this action through the date of the final disposition of this action (the
21 “Subclass Members”).

22 29. Plaintiff’s claims are brought and may properly be maintained as a class action because
23 there is a well-defined community of interest among the Class with respect to the claims asserted and
24 the Class are easily ascertainable.

25 30. The Class and Subclass Members are readily ascertainable. The number and identity
26 of the Class and Subclass Members are determinable from the records of Defendant. For purposes of
27 notice and other purposes related to this action, their names and addresses are readily available from
28

1 Defendant. Notice can be provided by any means permissible under the rules of civil procedure and
2 local rules.

3 31. The Class and Subclass Members are so numerous that joinder of all members is
4 impracticable. Upon information and belief, there are in excess of seventy (70) Class Members and
5 forty (40) Subclass Members.

6 32. Common questions of law and fact exist as to all Class and Subclass Members that are
7 answerable on a common basis and such questions predominate over any questions solely affecting
8 individual Class and Subclass Members. Such common questions will generate common answers and
9 will determine Defendant's liability to all (or nearly all) Class and Subclass Members. The common
10 questions include:

- 11 a. Whether Defendant employed Class and Subclass Members within the meaning of
12 the California Labor Code and Wage Order No. 4;
- 13 b. Whether Defendant failed to create and implement a reliable system ensuring the
14 payment of prevailing wages for covered work performed by Plaintiff and Class
15 Members when due;
- 16 c. Whether the work performed by Plaintiff and the Class Members on public works
17 projects, or any part thereof, requires payment of prevailing wages under Labor
18 Code § 1720 *et seq.*;
- 19 d. Whether Defendant failed and/or refused to pay Plaintiff and the Class Members
20 the prevailing rate of per diem wages on public works projects as required by the
21 CPWL;
- 22 e. Whether Defendant failed and/or refused to pay Plaintiff and the Class Members
23 the prevailing wage overtime premiums for work performed on public works
24 projects as required by the CPLW;
- 25 f. Whether the failure of Defendant to pay Plaintiff and Class Members the
26 minimum required wage under the CPLW for work on public projects has resulted
27 in Plaintiff and Class Members not being paid all wages due at the applicable
28 rates;

- 1 g. Whether Defendant has had a policy and practice of failing to provide an
2 uninterrupted 30-minute meal period for every five (5) hours worked, in violation
3 of Wage Order No. 16 § 10 and Labor Code §§ 226.7 and 512;
- 4 h. Whether Defendant has had a policy and practice of failing to provide a 10-minute
5 rest period for every four (4) hours or major fraction thereof worked, in violation
6 of Wage Order No. 16 § 11 and Labor Code § 226.7;
- 7 i. whether Defendant violated Cal. Lab. Code §§ 201-203 by failing to timely pay,
8 to Plaintiff and the Subclass Members, all wages due and owing upon termination
9 or within 72 hours of resignation; and
- 10 j. Whether Plaintiff and Class Members have lost money or property as a result of
11 Defendant's violations of Business and Professions Code §§ 17200 *et seq.*

12 33. Plaintiff's claims are typical of the Class and Subclass Members' claims. Plaintiff, like
13 all Class and Subclass Members, is or was employed by Defendant as a maintenance and repair
14 employee who worked for Defendant on their public works project pursuant to their corporate policies
15 and practices. Plaintiff, like all Class Members, was, *inter alia*, not paid the prevailing rate of per
16 diem wages for work performed on the public works project, was not permitted an off-duty 10-minute
17 rest break, and was not permitted an off-duty 30-minute meal break. Plaintiff, like all Subclass
18 Members, was, *inter alia*, not provided all wages owed to them at termination of their employment.
19 If Defendants are liable to Plaintiff for the claims enumerated in this Complaint, they are also liable
20 to all Class and Subclass Members.

21 34. Plaintiff and his Counsel will fairly and adequately represent the Class and Subclass
22 Members. There are no conflicts between Plaintiff and the Class and Subclass Members, and Plaintiff
23 brings this lawsuit out of a desire to help all Class and Subclass Members, not merely out of a desire
24 to recover his own damages.

25 35. Plaintiff's counsel are experienced class action litigators who are well-prepared to
26 represent the interests of the Class and Subclass Members.

27 36. A class action is superior to other available methods for the fair and efficient
28 adjudication of this litigation. Requiring each Class and Subclass Member to pursue her or his claims

1 individually would entail needless duplication, might result in inconsistent judgments, and would
2 waste the resources of both the parties and the judiciary. Moreover, the financial burden of proving
3 that Defendant violated the law as alleged herein also would make the prosecution of individual
4 actions virtually impossible for most, if not all members of the classes.

5 **V. ADDITIONAL FACTUAL ALLEGATIONS**

6 **Defendant's BART OAC Operations & Maintenance Contract Is Public Work.**

7 37. In 2009, BART awarded two contracts for the OAC project under a design-build-
8 operate-maintain (DBOM) procurement model: (1) a design-build contract pertaining to the
9 construction of the OAC – i.e., Contract No. 01ZK-110 (the “Design-Build Contract”); and (2) the
10 OAC O&M Contract (Contract No. 01ZK-120), pertaining to the operation and maintenance of the
11 completed OAC system, to be performed over a 20-year period (altogether, the “OAC Project”).
12 Dopplemayr was a sub-contractor on the Design-Build Contract responsible for installing the
13 ropeway, guideways, and cable liner vehicles. The construction of the OAC system pursuant to the
14 Design-Build Contract was completed in November 2014, at which point Dopplemayr's operations
15 and maintenance of the OAC system commenced, pursuant to the OAC O&M Contract.

16 38. The OAC O&M Contract portion of the OAC Project, was and is publicly funded,
17 primarily through state and local funds and fare collections.

18 39. BART maintains ownership of the OAC system and retains the right to oversee and
19 control the functioning of the OAC system and fixed facilities.

20 40. Through its explicit terms, as set forth in the “General Conditions” and
21 “Supplementary Conditions,” the OAC O&M Contract requires Dopplemayr to comply with the
22 CPWL by paying not less than the prevailing rate of wages to all workers employed on the project.

23 41. While the most common definition of “public works” is construction, alteration,
24 demolition, installation or repair work done under contract and paid for in whole or in part out of
25 public funds (Lab. Code § 1720, subd. (a)(1)), the CPWL also expressly applies to “contracts let for
26 maintenance work.” (Lab. Code § 1771; *Reliable Tree Experts v. Baker*, 200 Cal. App. 4th 785, 795-
27 796 [2011]; *See also Reclamation Dist. No. 684 v. State Dept. of Industrial Relations*, 125
28

1 Cal.App.4th 1000, 1005, n. 6, 23 Cal.Rptr.3d 269, 272 [Cal.Ct.App. 2005] (“maintenance work is
2 within the general definition of public works.”)).

3 42. Under Lab. Code § 1771 and its implementing regulation, “maintenance” is defined
4 as:

5 (1) Routine, recurring and usual work for the preservation, protection
6 and keeping of any publicly owned or publicly operated facility
7 (plant, building, structure, ground facility, utility system or any real
8 property) for its intended purposes in a safe and continually usable
9 condition for which it has been designed, improved, constructed,
10 altered or repaired.

11 (2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and
12 other craft work designed to preserve the publicly owned or publicly
13 operated facility in a safe, efficient and continuously usable
14 condition for which it was intended, including repairs, cleaning and
15 other operations on machinery and other equipment permanently
16 attached to the building or realty as fixtures.

17 (Cal. Code Regs., tit. 8, § 16000).

18 43. The “Scope of Work” for the OAC O&M Contract includes various maintenance and
19 repair obligations required of Dopplemayr to ensure “the uninterrupted and safe operation and
20 maintenance of the OAC System.” Specifically, Dopplemayr is responsible for “the maintenance of
21 all Operating System Equipment and Fixed Facilities supplied, installed, and constructed under the
22 Design-Build Contract including cleaning and preventive, corrective, and major maintenance on all
23 OAC System components.” A non-exhaustive list of such maintenance and repair tasks for the OAC
24 System includes repair and replacement of damages parts, components and materials, and routine,
25 scheduled, non-scheduled, reasonable wear/tear and other maintenance on: vehicles and on-board
26 equipment; power distribution systems; command, control and communications equipment;
27 guideway structures and equipment; stations and station equipment; maintenance and storage facility
28 and equipment; elevators and escalators; among others.

1 **Plaintiff and Class Members Performed Covered Work for Dopplemayr**

2 44. As maintenance technicians, Plaintiff and Class Members were responsible for
3 carrying out the numerous routine, preventative, and emergency maintenance and repair tasks
4 required by the OAC O&M Contract to ensure the safe and continually usable operation of the OAC
5 system and facilities for which they were constructed.

6 45. Specifically, Plaintiff and the Class Members performed daily, weekly, monthly,
7 quarterly and annual inspection, maintenance and repair tasks, in accordance with a Maintenance Plan
8 developed between Dopplemayr and BART, pursuant to the OAC O&M Contract.

9 46. For example, Plaintiff and Class Members performed inspections and repairs to realign
10 the tracks and guideway, rebuild and replace the sheaves/pulley system, the bull wheels, springs,
11 shocks, rubber wheels and other parts of the automated people mover vehicles, perform maintenance
12 on the pulley system, including the gears/gearbox, switches and sensors, inspect and repair gears and
13 handrails on the escalators and elevators, among many other inspection, maintenance and repair tasks.

14 47. The California Department of Industrial Relations (“DIR”) has consistently
15 determined that routine maintenance, repairs, testing and inspection work, of the types performed by
16 Plaintiff and Class Members on the OAC Project, is covered by the CPWL and should be compensated
17 at prevailing wage rates. E.g., Public Works Case No. 2019-021 (preventative maintenance service
18 and inspections on fire systems); Public Works Case No. 2018-016 (preventative maintenance on a
19 building automation system); Public Works Case No. 2015-016 (inspection and maintenance of water
20 quality testing and analytical equipment); Public Works Case No. 2015-012 (fire alarm and sprinkler
21 system testing, inspection and maintenance work); Public Works Case No. 2006-004 (inspection,
22 cleaning, and resetting of signal controllers and monthly maintenance), among others.

23 48. The DIR also determines the prevailing rate of pay for a given “craft, classification, or
24 type of work” and publishes these rates such that contractors and subcontractors are deemed to have
25 constructive notice of the applicable prevailing wage rates. Lab. Code § 1773; *Division of Labor*
26 *Standards Enforcement v. Ericsson Information Systems*, 221 Cal.App.3d 114, 125 (1990).

1 49. According to the OAC O&M Contract, the OAC system is an “automated people
2 mover” within an exclusive right-of-way that operates without drivers or attendants on vehicles and
3 which is powered by a cable-propelled technology.

4 50. The DIR’s Scope of Work for the trade classification “Elevator Constructor” in
5 Alameda County covers work on “automated people movers” (*see* Article IV, Par. 2(b)) including but
6 not limited to “general repairs” such as: realigning guide rails, rescoring of sheaves and drums,
7 replacement of worm and gears, rewiring or reinstalling limit switches, renewing of car shoes or roller
8 guides, among many others. *See* [https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-](https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-X-1-Sco.pdf)
9 [X-1-Sco.pdf](https://www.dir.ca.gov/oprl/2023-1/PWD/Scope/Northern/NC-062-X-1-Sco.pdf). As set forth in paragraph 46 *supra*, these are the types of maintenance and repair tasks
10 performed by Plaintiff and Class Members on the OAC systems and facilities.

11 51. Upon information and belief, the applicable prevailing wage rate for the work
12 performed by Plaintiff and Class Member was approximately \$83.73, including benefits.¹

13 52. At all times relevant, Plaintiff and Class Members received pay rates and benefits
14 substantially lower than the prevailing rate of per diem wages applicable to the work they performed
15 on the OAC O&M Contract.

16 **Plaintiff and Class Members Were Not Provided Uninterrupted Meal or Rest Breaks**

17 53. Due to Dopplemayr’s scheduling of maintenance technicians, including Plaintiff and
18 Class Members, and the time-sensitive nature of ensuring that the OAC system was properly running
19 to transport passengers during its scheduled service hours, Plaintiff and Class Members were
20 frequently interrupted while on their 10-minute rest break and/or 30-minute lunch break in order to
21 inspect and troubleshoot a service interruption.

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¹ This represents the prevailing wage rate applicable to the “Elevator Constructor” craft in effect when the OAC O&M Contract was bid in May 2009, with predetermined yearly increases of \$3.00 allocated to wages and/or employer payments through 2012. The prevailing wage rates applicable to each craft in Alameda County for each year during the relevant time period are available on the DIR website at: <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

1 54. While Dopplemayr's company policy² requires that Plaintiff and Class Members clock
2 out at the beginning of the lunch break and clock back in at the end of their lunch break, during which
3 time they are permitted to not respond to their radio, in practice, throughout the relevant time period,
4 when a service interruption took place or takes place, Dopplemayr's management has required that
5 Plaintiff and Class Members immediately address a service interruption and continue to work until
6 the service is restored, regardless of whether they were provided a required rest or lunch break or
7 were already clocked out for a lunch break. If such breaks were interrupted, Plaintiff and Class
8 Members were not permitted to make up the full missed break at a later time during their shift, but
9 rather are only provided the balance of the break time that was interrupted, if at all. These service
10 interruptions took place at least once per week, and often times more frequently when it was raining.

11 55. In addition, throughout the relevant time period, Dopplemayr regularly only scheduled
12 one maintenance technician during the swing shift on Friday to Saturday or Sunday to Monday, such
13 that there was no coverage for the maintenance technician to be relieved of all duty for the rest and/or
14 lunch break in the event of a service interruption or other urgent issue with the OAC system.

15 56. Further, pursuant to Dopplemayr's uniform practice, Plaintiff and Class Members who
16 worked the swing shift of twelve (12) hours or any shifts in excess of ten (10) hours also were not
17 permitted a second, 30-minute uninterrupted lunch break, or a third, 10-minute rest break.

18 57. Plaintiff and Class Members did not voluntarily waive or skip their rest and/or meal
19 breaks but instead were pressured to do so by Dopplemayr to ensure the OAC system was fully
20 operational at all times during service hours.

21 58. The frequent interruption of breaks and pressure from Dopplemayr management to
22 work through a break and/or return to work despite being on a break and/or not providing required
23 breaks, is, in part, a function of the strict operations requirements and related financial incentives of
24 the OAC O&M Contract. For example, Dopplemayr's monthly compensation is directly impacted by
25 the amount of "down time" of the OAC system and the escalator/elevators, through both an
26

27 ² Plaintiff is informed and believes that prior to his commencing work for Dopplemayr in 2019, as a
28 result of an investigation or litigation, Dopplemayr changed their previous written break policy to
ensure that it was compliant with the law in terms of permitting uninterrupted breaks.

1 “escalator/elevator downtime adjustment” and an “accumulated System Downtime deduction.”
2 Accordingly, if Dopplemayr permitted Plaintiff and Class Members to take their full rest and meal
3 breaks without interruption to troubleshoot and restore service to the OAC system, that would result
4 in more down time for the system and less pay for Dopplemayr. Consequently, the pressure from
5 Dopplemayr and the underlying financial incentives for restoring service to the OAC system as soon
6 as possible, resulted in Plaintiff and Class Members not being permitted uninterrupted rest and meal
7 breaks.

8 59. When Plaintiff and Class Members were not permitted an uninterrupted rest and/or
9 meal break, Dopplemayr failed to pay Plaintiff and Class Members premium pay for such denied
10 breaks.

11 **Plaintiff and Subclass Members Were Not Paid All Wages Owed At Separation**

12 60. Dopplemayr has had a policy and practice of not paying all earned wages to Plaintiff
13 and Subclass Members, including prevailing wages and benefits and missed meal period and rest
14 period premium pay, due either upon termination or within 72 hours of an unnoticed quit.

15 61. Dopplemayr’s failure to pay all wages due when owed was willful, given that
16 Dopplemayr was on notice that they owed prevailing wages to workers on the OAC Project, such as
17 Plaintiff and Class Members, as detailed in the OAC O&M Contract, but chose to ignore such
18 requirements and pay Plaintiff and Class Members a lower, non-prevailing wage rate for their work.

19 **VI. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY PREVAILING WAGES**

22 **IN VIOLATION OF LABOR CODE §§ 1720 et seq.**

23 **(Brought On Behalf of Plaintiff and Class Members)**

24 62. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
25 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
26 forth herein.

27 63. Defendant contracted to perform public work in the State of California on a public
28 works project covered by the California Prevailing Wage Law.

1 64. Plaintiff and Class Members were workers employed by Defendant to perform work
2 in the execution of such public work.

3 65. During the Class Period, Defendant has failed and refused to pay Plaintiff and Class
4 Members the prevailing rate of per diem wages, including overtime and the value of employee
5 benefits included in the per diem wages, as required by the California Prevailing Wage Law.

6 66. Defendant knew or should have known that Plaintiff and Class Members at all times
7 performed work for which they should have been paid at the prevailing rate of per diem wages.

8 67. Defendant's acts and omissions in this regard are willful and not in good faith, and are
9 without reasonable grounds for believing that the alleged acts and omissions are in compliance with
10 the California Prevailing Wage Law.

11 68. As a result of Defendant's acts and omissions in violation of the California Prevailing
12 Wage Law, Plaintiff and Class Members have suffered, and continue to suffer, monetary injury.

13 69. Declaratory and injunctive relief is necessary and appropriate to ensure that Defendant
14 ceases violating the California Prevailing Wage Law.

15 70. Plaintiff and Class Members are entitled to recover the unpaid balance of the
16 prevailing rate of per diem wages earned, plus interest and reasonable attorneys' fees and costs of this
17 action, pursuant to Cal. Lab. Code § 1194(a).

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

20 **IN VIOLATION OF LABOR CODE § 226.7 and WAGE ORDER NO. 16**

21 **(Brought On Behalf of Plaintiff and Class Members)**

22 71. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
23 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
24 forth herein.

25 72. Pursuant to Wage Order No. 16 § 11, "[e]very employer shall authorize and permit all
26 employees to take rest periods . . . based on the total hours worked daily at the rate of ten (10) minutes
27 net rest time per four (4) hours or major fraction thereof."

73. Labor Code § 226.7(b) states: “If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hours or pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

74. During the Class Period, Defendant has had a policy and practice of failing to permit and authorize required rest periods and not pay the related premium of one hour of additional pay at the regular rate of compensation for each workday that the compliant rest periods were not permitted or authorized.

75. Defendant knew or should have known that Plaintiff and Class Members were not authorized and permitted to take, and in fact did not take, rest periods throughout the relevant time period, based on their practice of requiring Plaintiff and Class Members to assist with service interruptions when Plaintiff and Class Members were on a rest break in order to ensure as limited down time of the system as possible.

76. As a result of Defendant's failure to permit and authorize Plaintiff and Class Members to take required rest periods, they are all liable to Plaintiff and other member of the Class for one hour of additional pay at the regular rate of compensation for each workday that the required rest periods were not provided, attorneys' fees, penalties, and interest, pursuant to Labor Code §§ 226.7, 218.5, and 1194, and Wage Order No. 16.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

IN VIOLATION OF LABOR CODE §§ 226.7, 512 and WAGE ORDER NO. 16

(Brought On Behalf of Plaintiff and Class Members)

77. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

78. Labor Code §§ 512 and Wage Order No. 16 § 10(A) require that an employer provide a meal period of at least 30 minutes in which each employee is relieved of all duty for every five (5) hours worked. Wage Order No. 16 § 10(B) requires that an employer must provide a second meal

1 period of no fewer than 30 minutes for all workdays on which an employee works more than ten (10)
2 hours

3 79. Labor Code § 226.7(b) states: “If an employer fails to provide an employee a meal
4 period or rest period in accordance with an applicable order of the Industrial Welfare Commission,
5 the employer shall pay the employee one additional hours or pay at the employee’s regular rate of
6 compensation for each work day that the meal or rest period is not provided.”

7 80. During the Class Period, Defendant has had a policy and practice of failing to provide
8 required meal periods and not pay the related premium of one hour of additional pay at the regular
9 rate of compensation for each workday that the compliant meal periods were not provided.

10 81. Defendant knew or should have known that Plaintiff and Class Members were not
11 authorized and permitted to take, and in fact did not take, uninterrupted 30-minute meal periods
12 throughout the relevant time period, based on their practice of requiring Plaintiff and Class Members
13 to assist with service interruptions when Plaintiff and Class Members were on a meal break in order
14 to ensure as limited down time of the system as possible.

15 82. As a result of Defendant’s failure to provide Plaintiff and Class Members to take
16 required uninterrupted 30-minute meal periods, they are all liable to Plaintiff and other member of
17 the Class for one hour of additional pay at the regular rate of compensation for each workday that the
18 required meal periods were not provided, attorneys’ fees, penalties, and interest, pursuant to Labor
19 Code §§ 226.7, 512, and 1194, and Wage Order No. 16.

20 **FOURTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

22 **IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et seq.**

23 **(Brought On Behalf of Plaintiff and Class Members)**

24 83. Plaintiff, on behalf of himself and the Class Members, repeats and realleges each and
25 every allegation of the preceding paragraphs hereof with the same force and effect as though fully set
26 forth herein.

84. Throughout the relevant time period, through Defendant's acts and omissions alleged herein, Defendant committed and continues to commit unlawful acts that violated and continue to violate Business and Professions Code §§ 17200 *et seq.*

85. Defendant's unlawful acts include violating the California Labor Code, as alleged herein.

86. Defendant's violations of this statute and wage and hour law constitute a business practice because Defendant's aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systemic manner, to the detriment of Plaintiff and Class Members.

87. As a result of Defendant's unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class Period at the expense of Plaintiff, Class Members, and members of the public. Defendant should be made to disgorge their ill-gotten gains to restore them to Plaintiff and Class Members.

88. As a result of the aforementioned acts, Plaintiff and the Class have lost and continue to lose money or property, and have suffered and continue to suffer injury in fact. Defendant continues to hold unpaid wages and other funds legally belonging to Plaintiff and the Class.

89. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions Code §§ 17203 and 17208 for, among other things, all unpaid prevailing wages, including overtime and fringe benefits, and interest since four (4) years prior to the filing of the Complaint.

90. Pursuant to Business and Professions Code § 17203, Plaintiff and similarly situated aggrieved employees and entitled to and seek injunctive relief against Defendant's continuation of the unlawful and unfair business practices described herein.

91. Plaintiff and the Class are entitled to restitution in the amounts unlawfully withheld by Defendants, with interest, injunctive relief, and an award of attorneys' fees and costs. *See Cortez v. Purolator Air Filtration Products Co.*, (2000) 23 Cal.4th 163, 177 (UCL authorizes, as restitution, order for payment of unlawfully withheld wages).

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION

IN VIOLATION OF LABOR CODE §§ 201, 202, 203

1 **(Brought On Behalf of Plaintiff and Subclass Members)**

2 92. Plaintiff, on behalf of himself and the Subclass Members, repeats and realleges each
3 and every allegation of the preceding paragraphs hereof with the same force and effect as though fully
4 set forth herein.

5 93. Labor Code §§ 201 and 202 require Defendant to pay their employees all wages due
6 immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or
7 within 72 hours of resignation made without 72 hours' notice.

8 94. Labor Code § 203 provides that if an employer willfully fails to pay compensations
9 promptly upon separation, as required by §§ 201 or 202, then the employer is liable for waiting time
10 penalties in the form of one day of wages for up to 30 days.

11 95. Throughout the relevant time period, as a result of Defendant's wage and hour
12 violations set forth above, Defendant has failed to pay all earned wages to Plaintiff and Subclass
13 Members who have separated from Defendants during the four (4) years prior to the filing of the
14 Complaint and continuing through the present.

15 96. As a result of Defendant's willful failure to pay all wages due to Plaintiff and Subclass
16 Members following separation from employment with Defendant, Defendant is liable to Plaintiff and
17 Subclass Members who have separated from their employment with Defendant an additional sum
18 equal to a day's wages for thirty (30) days, plus interest, in amounts to be proven at trial, attorneys'
19 fees, and costs, pursuant to Labor Code § 203.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- 22 A. Certification of this action as a class action pursuant to § 382 of the Code of Civil
23 Procedure on behalf of the proposed Class and Subclass, appointing Plaintiff and
24 their Counsel to represent the Class and Subclass Members;
- 25 B. An award of unpaid prevailing wages and benefits, and meal and rest period
26 premiums, owed to Plaintiff and the Class Members, in an amount to be
27 determined at trial;

- 1 C. An award of waiting time penalties for Plaintiff and the Subclass Members, in an
2 amount to be determined at trial;
- 3 D. An award of restitution of all monies due to Plaintiff and Class Members, as well
4 as disgorged profits from the unfair and unlawful business practices of Defendant;
- 5 E. Pre-judgment interest;
- 6 F. Declaratory relief;
- 7 G. Reasonable attorneys' fees and costs; and
- 8 H. For such further relief that the Court may deem just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a jury trial with respect to all issues triable of right to a jury.

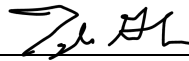
11

12 DATED: August 4, 2023

Respectfully submitted,

13 **PELTON GRAHAM LLP**

14 By:



15 Taylor B. Graham

16 *Attorneys for Plaintiff and the Proposed Class*

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1 **PROOF OF SERVICE**

2 I, Taylor B. Graham, am employed in San Francisco County, California. I am over the age of
3 eighteen (18) years and am not a party to the within action. My business address is: 220 Montgomery,
4 Suite 2100, San Francisco, CA 94104, and my electronic service address is:
graham@peltongraham.com.

5 On October 18, 2023, I served the foregoing document(s) described as:

6 **FIRST AMEDED CLASS ACTION AND REPRESENTATIVE ACTION**
7 **COMPLAINT**

8 [] **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary
9 business practices. I am readily familiar with the practice of Pelton Graham LLP's practice
10 for collecting and processing correspondence for mailing. On the same day that
11 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
business with the United States Postal Service, in a sealed envelope with postage fully
prepaid.

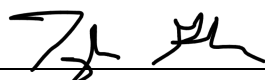
12 [X] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
13 agreement of the parties to accept service by electronic transmission, I caused the documents
14 to be served on the persons below through the user interface of CaseAnywhere, which
resulted in the transmission to said party of an email containing a hyperlink to the document
submitted.

15 Mollie Burks, Esq.
16 Mana Koleini, Esq.
17 GORDON REES SCULLY MANSUKHANI,
LLP
18 275 Battery Street, Suite 2000
San Francisco, CA 94111
19 Email: mburks@grsm.com
mkoleini@grsm.com

20 Attorneys for Defendant

21
22 [X] (State): I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct.

24 Executed on this 18th day of October, 2023.

25 
26 Taylor B. Graham, Esq.