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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

RODGER LEE CAPPS, an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

WEST COAST ENERGY SYSTEMS LLC, a
California limited liability company;
ELECTRONIC ENVIRONMENTS
CORPORATION, a Massachusetts
corporation; ELECTRONIC
ENVIRONMENTS CO. LLC, a Massachusetts
limited liability company; GENERAC, a
business entity of unknown form; GENERAC
POWER SYSTEMS, INC., a Wisconsin
corporation; GENERAC HOLDINGS, INC., a
Delaware corporation; ENERGY SYSTEMS, a
business entity of unknown form; and DOES 1
through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0010362

CLASS ACTION

Assigned for All Purposes To:
Hon. Robert T. Waters
Dept.: 11B

**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(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Failure to Provide One Day's Rest in Seven Under Labor Code §§ 551 and 552;
11. Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5;
12. Violation of Business & Professions Code § 17200 *et seq.*;
13. Failure to Make Proper Disclosure in Violation of the FCRA; and
14. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

BY FAX

INTRODUCTION

1. Plaintiff RODGER LEE CAPPS (“Plaintiff”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants WEST COAST ENERGY SYSTEMS LLC, a California limited liability company; ELECTRONIC ENVIRONEMENTS CORPORATION, a Massachusetts corporation; ELECTRONIC ENVIRONMENTS CO. LLC, a Massachusetts limited liability company; GENERAC, a business entity of unknown form; GENERAC POWER SYSTEMS, INC., a Wisconsin corporation; GENERAC HOLDINGS, INC., a Delaware corporation; ENERGY SYSTEMS, a business entity of unknown form; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

4. Plaintiff also bring this action against Defendants for alleged violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*

THE PARTIES

A. The Plaintiff

5. Plaintiff RODGER LEE CAPPS resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

6. Defendant WEST COAST ENERGY SYSTEMS, LLC is a California limited liability company and is registered with the California Secretary of State. Defendant WEST

1 COAST ENERGY SYSTEMS, LLC has been the employer listed on the wage statements and
2 employment records issued to Plaintiff during the relevant time period that Plaintiff was employed
3 with Defendants.

4 7. Defendant ELECTRONIC ENVIRONMENTS CORPORATION is a
5 Massachusetts corporation and is registered with the Massachusetts Secretary of State. Defendant
6 ELECTRONIC ENVIRONMENTS CORPORATION has been the employer listed on the wage
7 statements and employment records issued to Plaintiff during the relevant time period that Plaintiff
8 was employed with Defendants.

9 8. Defendant ELECTRONIC ENVIRONMENTS CO. LLC is a Massachusetts limited
10 liability company and is registered with the Massachusetts Secretary of State. Defendant
11 ELECTRONIC ENVIRONMENTS CO. LLC has been listed on the employment records issued to
12 Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

13 9. Defendant GENERAC is a business entity of unknown form. Defendant
14 GENERAC has been the employer listed on the wage statements and employment records issued
15 to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

16 10. Defendant GENERAC POWER SYSTEMS, INC. is a Wisconsin corporation and
17 is registered with the Wisconsin Secretary of State. Defendant GENERAC POWER SYSTEMS,
18 INC. has been listed on the employment records issued to Plaintiff during the relevant time period
19 that Plaintiff was employed with Defendants.

20 11. Defendant GENERAC HOLDINGS, INC. is a Delaware corporation and is
21 registered with the Delaware Secretary of State. Defendant GENERAC HOLDINGS, INC. has
22 been listed on the employment records issued to Plaintiff during the relevant time period that
23 Plaintiff was employed with Defendants.

24 12. Defendant ENERGY SYSTEMS is a business entity of unknown form. Defendant
25 ENERGY SYSTEMS has been listed on the employment records issued to Plaintiff during the
26 relevant time period that Plaintiff was employed with Defendants.

27 13. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

1 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of
2 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
3 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
4 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
5 this Complaint to reflect the true names and capacities of the Defendants designated herein as
6 Does 1 through 50 when their identities become known.

7 14. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
8 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
9 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
10 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
11 all respects as the employers or joint employers of Class Members. Defendants, and each of them,
12 exercised control over the wages, hours or working conditions of Class Members, or suffered or
13 permitted Class Members to work, or engaged, thereby creating a common law employment
14 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
15 employed Class Members.

16 15. Whenever and wherever reference is made in this Complaint to any act by a
17 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
18 failures to act of each defendant acting individually, jointly, and severally.

19 16. Whenever and wherever reference is made to individuals who are not named as a
20 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
21 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
22 of their employment.

23 **JURISDICTION AND VENUE**

24 17. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
26 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
27 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
28 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,

1 the obligations and liabilities giving rise to this lawsuit occurred in part in San Joaquin County.
2 Defendants maintain and operate facilities in San Joaquin County and employs Plaintiff and other
3 Class Members in San Joaquin County, while doing business throughout California.

4 **FACTUAL BACKGROUND**

5 18. Class Members consistently worked at Defendants behest without being paid all
6 wages due. Class Members were either not paid by Defendants for all hours worked or were not
7 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
8 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
9 clock work, failing to provide sufficient compensation for on-call time, failing to incorporate the
10 prevailing wage rate into the regular rate of pay used to calculate and pay for overtime and double
11 time pay, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing to
12 furnish accurate wage statements, failing to timely pay wages including final wages, failing to
13 maintain accurate records, failing to provide one day's rest in seven, and failing to reimburse
14 necessary business expenses all in violation of various provisions of the California Labor Code
15 and applicable Wage Orders.

16 19. During the course of Class Members' employment with Defendants, they were not
17 paid all wages they were owed, including for all work performed resulting in off the clock work.
18 Class Members were required to perform pre-shift and post-shift off the clock work which they
19 were not compensated for despite being subject to Defendants' control. Specifically, Class
20 Members were required to complete reports on the work they performed during their shifts after
21 clocking out. Additionally, Class Members were instructed to clock out for their meal breaks and
22 to continue working thereby resulting in further off the clock work.

23 20. Defendants also failed to pay Class Members all wages due and owing because
24 Defendants failed to incorporate the prevailing wage rate into the regular rate of pay used to
25 calculate and pay for overtime and double time pay. Contrary to the requirements of the Labor
26 Code and IWC Wage Orders under California law, Defendants did not use the regular rate of pay
27 Defendants to calculate and pay for overtime pay, double time pay, sick pay, and meal and rest
28 break premiums.

1 21. Defendants also failed to pay Class Members all wages due and owing because
2 Defendants failed to pay for on-call time. Specifically, Defendants would contact Plaintiff and
3 inform him that the truck has arrived and needs to immediately be unloaded. Plaintiff had to
4 immediately report to work and was not paid on-call pay. Upon information and belief, Class
5 Members were also required to be on-call and were not compensated for on-call pay.

6 22. Moreover, Defendants had a consistent policy and practice of unlawfully rounding
7 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
8 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
9 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
10 30-minute time increment), and generally did so to the detriment of the Class Members, and
11 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
12 Members by systematically under-compensating them. Rather than reflecting the actual hours
13 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
14 work time rather than the actual hours worked. These unlawfully rounded time entries were
15 inputted into Defendants' payroll system from which wage statements and payroll checks were
16 created.

17 23. By implementing policies, programs, practices, procedures and protocols which
18 resulted in off the clock work and also rounded the hours worked by Class Members down to their
19 detriment and systematically failed to pay for all hours worked, Defendants' willful actions
20 resulted in the systematic underpayment of wages to Class Members, including underpayment of
21 overtime pay to Class Members over the relevant time period. For example, the above described
22 off the clock work addressed above caused Plaintiff to begin receiving overtime pay later than
23 they should have.

24 24. As a result of the above described requirements to work off the clock, unlawful
25 rounding by Defendants and the other wage violations they endured at Defendants' hands, Class
26 Members were not properly paid all wages earned and all wages owed to them by Defendants,
27 including when working more than eight (8) hours in any given day and/or more than forty (40)
28 hours in any given week.

1 25. As a result of Defendants' unlawful policies and practices, Class Members incurred
2 overtime hours worked for which they were not adequately and completely compensated, in
3 addition to the hours they were required to work off the clock. To the extent applicable,
4 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
5 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
6 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
7 day, as required under the Labor Code and applicable IWC Wage Orders.

8 26. Therefore, from at least four (4) years prior to the filing of this lawsuit and
9 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
10 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
11 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
12 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
13 Orders as the actual times when Class Members were under the control and direction of
14 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
15 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
16 including underpayment of overtime pay to Class Members over a period of time.

17 27. Therefore, from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
19 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
20 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
21 Class Members their true and correct overtime compensation at premium overtime rates for all
22 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
23 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
24 and the corresponding sections of IWC Wage Orders.

25 28. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
26 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
27 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
28 ordered by Defendants for more than five (5) hours during a shift but were often required to do so

1 without receiving a lawful and timely meal break. In addition to untimely meal periods,
2 Defendants also required Class Members to respond to work demands. Defendants placed their
3 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
4 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
5 ones, because the demands of the job would not avail them the opportunity to take a lawfully
6 uninterrupted and off duty meal and/or rest break.

7 29. On the occasions when Class Members worked over 10 hours in a shift, Defendants
8 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
9 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
10 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
11 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
12 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
13 each meal period or rest break that Defendants failed to provide or deficiently provided.

14 30. Therefore, for at least four years prior to the filing of this action and through to the
15 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
16 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
17 and shifts in excess of (10) hours without providing them with second meal periods of not less
18 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
19 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
20 failed to provide or deficiently provided.

21 31. Meal period violations thus occurred in one or more of the following manners:

- 22 (a) Class Members were not provided full thirty-minute duty free meal periods
23 for work days in excess of five (5) hours and were not compensated one (1)
24 hour's wages in lieu thereof, all in violation of, among others, Labor Code
25 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
26 Order(s);
- 27 (b) Class Members were not provided second full thirty-minute duty free meal
28 periods for work days in excess of ten (10) hours;

- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were restricted in their ability to take a full thirty-minute meal period.

32. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

33. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

34. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements did not provide a separate category calculating the total hours worked by Class Members. Thus, the wage statements do not

1 comply with Labor Code § 226(a)(2). Additionally, the wage statements given to Class Members
2 failed incorporate the prevailing wage rate into the regular rate of pay used to calculate and pay for
3 overtime, double time, sick pay, and meal and rest break premiums. Thus, the wage statements do
4 not provide accurate hourly rates for overtime and the statements do not comply with Labor Code
5 § 226(a)(9). Moreover, the wage statements given to Class Members failed to accurately account
6 for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the
7 detriment of the Class Members and their actual hours worked were under-reported due to off the
8 clock work. Additionally, the wage statements given to Class Members failed to accurately
9 account for premium pay for deficiently provided meal periods and rest breaks.

10 35. From at least four (4) years prior to filing this lawsuit and continuing to the present,
11 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
12 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
13 required by California wage-and-hour laws. Specifically, Defendants failed to pay Plaintiff for all
14 wages due and certain within seventy-two (72) hours of his resignation and instead waited at least
15 nine days to give Plaintiff his final check. Additionally, Class Members were not paid all regular
16 and overtime wages because Defendants failed to pay for all hours worked by requiring off the
17 clock work, unlawfully rounding time entries to the detriment of Class Members, and failing to
18 incorporate prevailing wages into the regular rate of pay used to calculate and pay for overtime,
19 double time, sick pay, and meal and rest break premiums. Moreover, Defendants failed to pay
20 premium wages owed for unprovided meal periods and rest periods, as further detailed in this
21 Complaint. Defendants' failure to pay said wages within the required time was willful within the
22 meaning of Labor Code § 203.

23 36. Moreover, from at least four (4) years prior to the filing of this lawsuit and
24 continuing to the present, Defendants knew or should have known that employees were entitled to
25 one day's rest in seven. In violation of the California Labor Code, Defendants required Class
26 Members to work more than six consecutive days without a day of rest, where the total hours
27 worked exceeded 30 hours in any week or six hours in any one day thereof.

28 37. Additionally, from at least four (4) years prior to the filing of this lawsuit and

1 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses
2 in the course of performing his required job duties for Defendants including for cell phone
3 expenses, home internet, and tools and equipment. Upon information and belief, Class Members
4 incurred similar costs. These expenses incurred by Plaintiff and Class Members were necessary
5 and required of them in performing their assigned job duties, but Defendants failed to reimburse
6 Class Members for all such necessary expenditures, thus entitling them to reimbursement
7 according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC
8 Wage Orders.

9 38. Defendants also violated California Labor Code § 246 by not providing all required
10 paid sick days to Plaintiffs and the aggrieved employees. Labor Code § 246 provides that an
11 Employee who “works in California for the same employer for 30 or more days within a year from
12 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.” Plaintiffs accordingly seek this relief
23 available for Defendants’ failure to provide Employees with all their required and earned sick days
24 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
25 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
26 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and
27 costs pursuant to Labor Code § 2699(g)(1).

28 39. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,

1 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226(b), 226.3, 226.7, 510, 512, 551, 552,
2 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802 and 2698
3 *et seq.* and California Code of Regulations, Title 8, section 11000 *et seq.*

4 40. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
5 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
6 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
7 fraudulent practices alleged in this Complaint.

8 41. When Plaintiff applied for employment with Defendants, Defendants provided a
9 disclosure and authorization form to perform a background investigation.

10 42. The disclosures provided by Defendants contained extraneous and superfluous
11 language that does not consist solely of the disclosure as required by the FCRA and/or is not clear
12 and conspicuous.

13 43. In violation of Section 1681 b(b)(2)(A) of the FCRA, the following provisions of
14 Defendant's disclosure documents contain extraneous information that violates the “solely”
15 requirement of the FCRA:

16 44. Defendants disclosure includes information regarding the rights of New York,
17 Washington, Massachusetts, Minnesota, and Oklahoma. This is extraneous and noncompliant with
18 FCRA disclosure requirements. The laws of New York, Washington, Massachusetts, Minnesota,
19 and Oklahoma have no bearing on applicants outside of New York, Washington, Massachusetts,
20 Minnesota, and Oklahoma.

21 45. Additionally, the inclusion of the extraneous provisions causes the disclosure to fail
22 to be “clear and conspicuous” and “clear and accurate,” and thus violates Sections 1681b(b)(2)(A)
23 and 1681d(a). More specifically, the disclosure does not comply with the “clear and conspicuous”
24 requirement because the disclosure includes multi-state information that is not a permissible
25 element in an FCRA disclosure and reduces clarity as to what rights each applicant or employee
26 possesses. The FCRA disclosure should be a standalone document and, if desired, a bare
27 authorization to obtain information, without being weighed down by multiple, irrelevant state law
28 references, confusing and contradictory rights summaries, and acknowledgement of receipt of

1 separate documents, and impermissible references to side documents containing information not
2 set forth in the attempted disclosure.

3 **CLASS ALLEGATIONS**

4 46. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

20 f. Subclass 6. Termination Pay Subclass. All Class Members who, within the
21 applicable limitations period, either voluntarily or involuntarily separated from their employment
22 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
23 termination.

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

27 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
28 Defendants' policy and/or practice of failing to keep accurate time and wage records as required

1 by California wage-and-hour laws.

2 i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred
3 necessary and reasonable expenses in connection with performing their job duties for
4 Defendant and who were subject to a policy and/or practice under which such expenses
5 were not reimbursed.

6 j. Subclass 10. Failure to Provide One Day of Rest in Seven. All Class Members who
7 were subject to Defendants policy of scheduling Class Members to work six (6) or more hours per
8 day and more than seven (7) consecutive days in a workweek.

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

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

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

25 49. This action has been brought and may properly be maintained as a class action
26 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
27 of interest in litigation and proposed class is easily ascertainable.

28 ///

1 **A. Numerosity**

2 50. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of class member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
6 the State of California.

7 51. Accounting for employee turnover during the relevant time period increases this
8 number substantially. Plaintiff alleges that Defendants' employment records will provide
9 information as to the number and location of all Class Members.

10 **B. Commonality**

11 52. There are questions of law and fact common to the Class that predominates over
12 any questions affecting only individual Class Members. These common questions of law and fact
13 include:

- 14 a. Whether Defendants failed to pay Class Members minimum wages;
- 15 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 16 c. Whether Defendants failed to pay Class Members overtime as required under Labor
17 Code § 510;
- 18 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
19 IWC Wage Orders, by failing to provide Class Members with requisite meal
20 periods or premium pay in lieu thereof;
- 21 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
22 Orders, by failing to authorize and permit Class Members to take requisite rest
23 breaks or provide premium pay in lieu thereof;
- 24 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
25 with inaccurate wage statements;
- 26 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
27 wages and compensation due and owing at the time of termination of employment;
- 28 h. Whether Defendants' conduct was willful;

- 1 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
2 Orders by failing to maintain accurate records of Class Members' earned wages and
3 work periods;
- 4 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
5 Members during the relevant time period for all hours worked, whether regular or
6 overtime;
- 7 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 8 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
9 necessary business expenses Defendants required them to incur in performing their
10 job duties;
- 11 m. Whether Defendants violated Labor Code §§ 551 and 552 by failing to provide one
12 day's rest in seven;
- 13 n. Whether Defendants violated Labor Code §§ 226 and 1198.5 by failing to produce
14 employment records and pay records;
- 15 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 16 p. Whether Class Members are entitled to equitable relief pursuant to Business and
17 Professions Code § 17200 *et seq.*;
- 18 q. Whether Defendant's standard FCRA disclosure meets 15 U.S.C. §
19 1681b(b)(2)(A)(i)'s "clear and conspicuous disclosure" requirement;
- 20 r. Whether Defendant's standard FCRA disclosure is "in a document that consists
21 solely of the disclosure" (15 U.S.C. § 1681 b(b)(2)(A)(i)); and
- 22 s. Whether Defendant "willfully" violated the FCRA pursuant to 15 U.S.C. § 1681n.

23 **C. Typicality**

24 53. The claims of the named plaintiff is typical of those of Class Members. The Class
25 Members all sustained injuries and damages arising out of and caused by Defendants' common
26 course of conduct in violation of statutes, as well as regulations that have the force and effect of
27 law, as alleged herein.

28 **D. Adequacy of Representation**

1 54. Plaintiff will fairly and adequately represent and protect the interest of the Class
2 Members. Counsel who represents Class Members are experienced and competent in litigating
3 employment class actions.

4 **E. Superiority of Class Action**

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

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

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

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

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

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

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Against All Defendants)**

19 60. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
20 full herein.

21 61. Defendants failed to pay Class Members minimum wages for all hours worked.
22 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
23 Class Members for all hours worked. Class Members would work hours and not receive wages,
24 including as alleged above in connection with off the clock work and unlawful rounding of hours.
25 Defendants, and each of them, have intentionally and improperly changed, adjusted and/or
26 modified the hours of Class Members, which resulted in off the clock work and underpayment of
27 all wages owed to Class Members over a period of time, while benefiting Defendants.
28 Additionally, Defendants failed to incorporate the prevailing wage rate into the regular rate of pay

1 used to calculate and pay for overtime and double time pay overtime pay, double pay, sick pay,
2 and meal and rest break premiums. During the relevant time period, Defendants thus regularly
3 failed to pay minimum wages to Class Members, to their detriment. Additionally, Defendants had
4 a consistent policy of failing to pay Class Members for hours worked during alleged meal and rest
5 periods for which Class Members were consistently denied, as also addressed herein. Defendants'
6 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
7 the Class as a whole, as a result of implementing a uniform policy and practice that denied
8 accurate compensation to Class Members as to minimum wage pay.

9 62. In California, employees must be paid at least the then applicable state minimum
10 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
11 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
12 timely pay its employees for all hours worked. Defendants failed to do so.

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

16 64. The applicable minimum wages fixed by the commission for work during the
17 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

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

24 66. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
25 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
26 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
27 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
28 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may

1 be used as a credit against a minimum wage obligation.

2 67. In committing these violations of the California Labor Code, Defendants
3 inaccurately recorded, or required Class Members to input times that did not reflect their actual
4 hours worked, or calculated the correct time worked and consequently underpaid the actual time
5 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
6 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
7 Commission requirements and other applicable laws and regulations. As a result of these
8 violations, Defendant also failed to timely pay all wages earned in accordance with California
9 Labor Code § 1194.

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

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

18 70. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
19 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

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

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

1 Labor Code, including § 558, and/or other applicable statutes.

2 **SECOND CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

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

13 75. By their conduct, as set forth herein, Defendants violated California Labor Code §
14 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
15 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
16 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
17 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
18 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
19 eight (8) hours on any seventh day of work in a workweek.

20 76. Defendants had a consistent policy of not paying Class Members wages for all
21 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
22 hours worked as addressed above. Defendants, and each of them, have intentionally and
23 improperly rounded, changed, adjusted and/or modified certain employees’ hours, including
24 Plaintiff’s, in order to avoid paying Class Members all earned and owed straight time and
25 overtime wages and other benefits, in violation of the California Labor Code, the California Code
26 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
27 Standards and Enforcement. Defendants have also violated these provisions by requiring Class
28 Members to work through portions of their meal period. Therefore, Class Members were not

1 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
2 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants
3 did not make available to Class Members a reasonable protocol for correcting time records when
4 Class Members worked overtime hours or to fix incorrect time entries or those that Defendants
5 unlawfully rounded to the Class Members' detriment.

6 77. Defendants' failure to pay Class Members the unpaid balance of regular wages
7 owed and overtime compensation, as required by California law, violates the provisions of Labor
8 Code §§ 510 and 1198, and is therefore unlawful.

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

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

1 80. Class Members have been damaged by these violations of California Labor Code
2 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

3 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
4 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
5 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
6 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
7 assessment of any statutory penalties against Defendants, and each of them, and any additional
8 sums as provided by the Labor Code and/or other statutes.

9 **THIRD CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

14 83. Class Members regularly worked shifts greater than five (5) hours and in some
15 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
16 someone for a shift of more than five (5) hours without providing him or her with a meal period of
17 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
18 her with a second meal period of not less than thirty (30) minutes.

19 84. Defendants failed to provide Class Members with meal periods as required under
20 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
21 resulted in Class Members consistently having to work through their scheduled meal breaks
22 because the demands of the job would not avail them the opportunity to take a lawfully
23 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
24 when Class Members worked more than ten (10) hours in a given shift, they did so without
25 receiving a second uninterrupted thirty (30) minute meal period as required by law.

26 85. Defendants thus failed to provide Class Members with meal periods as required by
27 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
28 providing them late or for less than thirty (30) minutes, or by requiring them to perform work

1 during breaks.

2 86. Moreover, Defendants failed to compensate Class Members for each meal period
3 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
4 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
5 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
6 pay at the employee's regular rate of compensation for each workday that the meal period is not
7 provided. Defendants failed to compensate Class Members for each meal period not provided or
8 inadequately provided, as required under Labor Code § 226.7.

9 87. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
10 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
11 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
12 sum to be proven at trial, as well as the assessment of any statutory penalties against the
13 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

14 **FOURTH CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

22 90. Class Members consistently worked consecutive four (4) hour shifts and were
23 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
24 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
25 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
26 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
27 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
28 placed their needs over Class Members lawful rest breaks and this resulted in Class Members

1 consistently having to work through their scheduled rest breaks because the demands of the job
2 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
3 Thus, Class Members were consistently denied of their rest breaks.

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

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

11 93. Defendants failed to authorize and permit Class Members to take rest periods, as
12 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
13 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
14 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

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

20 **FIFTH CAUSE OF ACTION**

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

22 **(Against All Defendants)**

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

25 96. California Labor Code § 226(a) requires an employer to furnish each of his or her
26 employees with an accurate, itemized statement in writing showing the gross and net earnings,
27 total hours worked, and the corresponding number of hours worked at each hourly rate; these
28 statements must be appended to the detachable part of the check, draft, voucher, or whatever else

1 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
2 statements may be given to the employee separately from the payment of wages; in either case the
3 employer must give the employee these statements twice a month or each time wages are paid.

4 97. Defendants failed to provide Class Members with accurate itemized wage
5 statements in writing, as required by the Labor Code. Specifically, the wage statements did not
6 provide a separate category calculating the total hours worked by Class Members. Thus, the wage
7 statements do not comply with Labor Code § 226(a)(2). Additionally, the wage statements given
8 to Class Members failed incorporate the prevailing wage rate into the regular rate of pay used to
9 calculate and pay for overtime, double time, sick pay, and meal and rest break premiums. Thus,
10 the wage statements do not provide accurate hourly rates for overtime and the statements do not
11 comply with Labor Code § 226(a)(9). Moreover, the wage statements given to Class Members
12 failed to accurately account for unpaid wages and overtime because Defendants had unlawfully
13 rounded time entries to the detriment of the Class Members and their actual hours worked were
14 under-reported due to off the clock work. Additionally, the wage statements given to Class
15 Members failed to accurately account for premium pay for deficiently provided meal periods and
16 rest breaks.

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

28 99. Class Members suffered injury as a result of Defendants' knowing and intentional

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

15 100. Therefore, as a direct and proximate cause of Defendants’ violation of
16 Labor Code § 226(a), Class Members suffered injuries, including among other things confusion
17 over whether they received all wages owed them, the difficulty and expense involved in
18 reconstructing pay records, and forcing them to make mathematical computations to analyze
19 whether the wages paid in fact compensated them correctly for all hours worked.

20 101. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable
21 IWC Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
23 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
24 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
25 reasonable attorneys’ fees.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

103. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

104. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

105. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

106. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Defendants failed to pay Plaintiff for all wages due and certain within seventy-two (72) hours of his resignation and instead waited at least nine days to give Plaintiff his final check. Additionally, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by requiring off the clock work, unlawfully rounding time entries to the detriment of Class Members, and failing to incorporate prevailing wages into the regular rate of pay used to calculate and pay for overtime, double time, sick pay, and meal and rest break premiums. Moreover, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

107. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

109. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period. These failures all arose from either Defendants’ failure to pay for all hours worked or failure to pay all earned commission wages.

110. All wages due and owing to Plaintiff and the Class Members, including as required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail above. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each Class Member in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages or commissions to which he or she was entitled.

111. Defendants thus violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of

the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less 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.

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

EIGHTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174

AND 1174.5

(Against All Defendants)

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

114. 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.

115. During the course of Plaintiff's and Class Members' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

116. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

1 **NINTH CAUSE OF ACTION**

2 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

3 **(Against All Defendants)**

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

6 118. Under Labor Code § 2802(a) an employer must indemnify its employees for
7 all necessary expenditures or losses incurred by the employee in direct consequence of the
8 discharge of his or her duties, or of his or her obedience to the directions of the employer.

9 119. Defendants have regularly required Plaintiff to incur business expenses in
10 the course of performing his required job duties for Defendants including for cell phone expenses,
11 home internet, and tools and equipment. Upon information and belief, Class Members incurred
12 similar costs. These expenses incurred by Plaintiff and Class Members were necessary and
13 required of them in performing their assigned job duties, but Defendants failed to reimburse Class
14 Members for all such necessary expenditures, thus entitling them to reimbursement according to
15 proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage
16 Orders, paragraph 9.

17 120. As a result of the unlawful acts of Defendants, Class Members have been
18 deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of
19 such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN UNDER LABOR CODE §§ 551**

22 **and 552**

23 **(Against All Defendants)**

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

26 122. At all relevant times herein, Labor Code § 551 provides that every person
27 employed in any occupation of labor is entitled to one day's rest in seven. Additionally, Labor
28 Code § 552 prohibits employers from requiring employees to work more than six consecutive days

1 without a day of rest.

2 123. At all relevant times herein set forth, Labor Code § 556 exempts an
3 employer from the day-of-rest requirement when the total hours worked by an employee do not
4 exceed 30 hours in any week or six hours in any one day thereof.

5 124. Labor Code § 558(a) provides “[a]ny employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provision regulating hours and days of work in any order of the Industrial Welfare Commission
8 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
9 each underpaid employee for each pay period for which the employee was underpaid.... (2) For
10 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee was underpaid....” Labor Code § 558(c) provides “[t]he civil
12 penalties provided for in this section are in addition to any other civil or criminal penalty provided
13 by law.”

14 125. During the relevant time period, on information and belief, Defendants
15 sometimes scheduled Class Members to work six (6) or more hours per day and more than seven
16 (7) consecutive days in a workweek. Because Class Members worked over 30 hours per week and
17 over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement.
18 To the extent that Class Members may have signed purported waivers of their right to a day's rest
19 in seven, such waivers are invalid.

20 126. Thus, during the relevant time period, and in violation of Labor Code § 551
21 and 552, Defendants willfully caused Class Members to work more than six days in seven. Class
22 Members are therefore entitled to recover civil penalties pursuant to Labor Code § 558.

23 **ELEVENTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 128. Pursuant to California Labor Code § 226, current and former employees

1 have the right to inspect or receive a copy of their records pertaining to their employment, upon
2 reasonable request to their employer. Under this statute, an employer that receives a request to
3 inspect or receive a copy of records pertaining to a current or former employee must comply with
4 the request as soon as practicable, but no later than twenty-one calendar days from the date of the
5 request.

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

16 130. On March 3, 2023, Plaintiff sent written requests through his counsel to
17 Defendants for their payroll records, timecards, and personnel records. However, Plaintiff did not
18 receive the complete records until May 8, 2023, sixty-six days after Plaintiff's request.

19 131. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to
20 timely produce the required records requested by Plaintiff.

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

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

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

1 Class members similarly situated are similarly entitled.

2 **TWELFTH CAUSE OF ACTION**
3 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
4 **(Against All Defendants)**

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

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

12 137. Plaintiff is a “person” within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
14 relief, restitution, and other appropriate equitable relief.

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

24 139. Wage-and-hour laws express fundamental public policies. Paying
25 employees their wages and overtime, providing them with meal periods and rest breaks, etc., are
26 fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of
27 this State vigorously to enforce minimum labor standards, to ensure that employees are not
28 required or permitted to work under substandard and unlawful conditions, and to protect law-

1 abiding employers and their employees from competitors who lower costs to themselves by failing
2 to comply with minimum labor standards.

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

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

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

15 143. By the conduct alleged herein, Defendants have engaged and continue to
16 engage in a business practice which violates California and federal law, including but not limited
17 to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California
18 Labor Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this
19 Court should issue declaratory and other equitable relief pursuant to California Business &
20 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
21 constitute unfair competition, including restitution of wages wrongfully withheld.

22 144. As a proximate result of the above-mentioned acts of Defendants, Class
23 Members have been damaged, in a sum to be proven at trial.

24 145. Unless restrained by this Court Defendants will continue to engage in such
25 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
26 should make such orders or judgments, including the appointment of a receiver, as may be
27 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, including but not limited to the

1 disgorgement of such profits as may be necessary to restore Class Members to the money
2 Defendants have unlawfully failed to pay.

3 **THIRTEENTH CAUSE OF ACTION**

4 **FAILURE TO MAKE A PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

5 **(15 U.S.C. §§ 1681b(b)(2)(A))**

6 **(Against All Defendants)**

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

9 147. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged
10 herein.

11 148. Defendants are “persons” as defined by Section 1681 a(b) of the FCRA.

12 149. Plaintiff and FCRA Class members are “consumers” within the meaning
13 Section 1681a(c) of the FCRA, because they are “individuals.”

14 150. Section 1681a(d)(1) of the FCRA defines “consumer report” as any oral, or
15 other communication of any information by a consumer reporting agency bearing on a consumer's
16 credit worthiness, credit standing, credit capacity, character, general reputation, personal
17 characteristics, or mode of living which is used or expected to be used or collected in whole or in
18 part for the purpose of serving as a factor in establishing the consumer's eligibility” for
19 employment purposes. As defined, a credit and background report qualifies as a consumer report.

20 151. Section 1681b(b) of the FCRA provides, in relevant part: Conditions for
21 furnishing and using consumer reports for employment purposes

22 (2) Disclosure to consumer

23 (A) In general

24 Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a
25 consumer report to be procured, for employment purposes with respect to any consumer, unless--

26 (i) a clear and conspicuous disclosure has been made in writing to the consumer at any
27 time before the report is procured or caused to be procured, in a document that consists solely of
28 the disclosure, that a consumer report may be obtained for employment purposes; and

1 (ii) the consumer has authorized in writing (which authorization may be made on the
2 document referred to in clause (i)) the procurement of the report by that person.

3 15 U.S.C. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be
4 made in writing.

5 152. As described above, Plaintiff alleges, on information and belief, that in
6 evaluating his and other class members for employment, Defendants procured or caused to be
7 prepared credit and background reports (i.e., a consumer report and/or investigative consumer
8 report, as defined by 15 U.S.C. § 1681a(d)(1)(B) and 15 U.S.C. § 1681a(e)).

9 153. The purported disclosures do not meet the requirements under the law
10 because they are embedded with extraneous information, and are not clear and conspicuous
11 disclosures in a stand-alone document.

12 154. Under the FCRA, it is unlawful to procure or caused to be procured, a
13 consumer report or investigative consumer report for employment purposes unless the disclosure
14 is made in a document that consists solely of the disclosure and the consumer has authorized, in
15 writing, the procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii). The inclusion of a
16 release and other extraneous information, therefore, violates § 1681b(b)(2)(A) of the FCRA.

17 155. Although the disclosure and the authorization may be combined in a single
18 document, the Federal Trade Commission (“FTC”) has warned that the form should not include
19 any extraneous information or be part of another document. For example, in response to an inquiry
20 as to whether the disclosure may be set forth within an application for employment or whether it
21 must be included in a separate document, the FTC stated: The disclosure may not be part of an
22 employment application because the language [of 15 U.S.C. § 1681b(b)(2)(A) is] intended to
23 ensure that it appears conspicuously in a document not encumbered by any other information. The
24 reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from
25 being distracted by other information side-by-side within the disclosure.

26 156. Defendants' conduct in violation of Section 1681b(b)(2)(A) of the FCRA
27 was and is willful. Defendants acted in deliberate or reckless disregard of their obligations and the
28 rights of applicants and employees, including Plaintiff and class members.

1 157. Defendants' willful conduct is reflected by, among other things, the
2 following facts: (a) Defendants are large entities with access to legal advice; (b) Defendants
3 required a purported authorization to perform credit and background checks in the process of
4 employing the class members which, although defective, evidences Defendants' awareness of and
5 willful failure to follow the governing laws concerning such authorizations;

6 158. Accordingly, Defendants willfully violated and continue to violate the
7 FCRA including, but not limited to, §§ 1681b(b)(2) (A) and 1681d(a). Defendants' willful conduct
8 is reflected by, among other things, the facts set forth above.

9 159. Plaintiff, on behalf of himself and all FCRA Class members, seeks remedies
10 pursuant to 15 U.S.C. § 1681n, including statutory damages, and attorneys' fees and costs

11 **FOURTEENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***
13 **(Against All Defendants)**

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

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

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

27 163. As such, Employees seek wages and penalties under Labor Code §§ 2698
28 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, 226, 226.2, 226.7, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and 2698 *et seq.*

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

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

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),

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

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

(e) Failure to Reimburse Necessary Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 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).

165. 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:

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

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

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

18 166. Plaintiff has exhausted his administrative remedies by sending a certified
19 letter to the LWDA and Defendants postmarked on **September 29, 2023**, addressing in detail the
20 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
21 theories to support the alleged violations and requested penalties. The LWDA has not provided
22 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
23 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
24 addressed herein and in the PAGA Notice letter and the original Complaint.

25 **RELIEF REQUESTED**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
- 28 2. For compensatory damages in the amount of the unpaid minimum wages for work
performed by Class Members and unpaid overtime compensation from at least four (4) years prior
to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and
interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime
and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class

Members for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;

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

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

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

9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 204, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

11. For penalties pursuant to Labor Code § 558 for Class Members for violating Labor Code §§ 551 and 552, as may be proven;

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

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

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

15. A determination and judgment that Defendant willfully violated 15 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA;

16. Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory damages to Plaintiff and all Class members each willful violation of the FCRA;

17. Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages to Plaintiff and all Class members;

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

8
9 DATED: December 4, 2023

D.LAW, INC.

10
11 By: 
12 David Yeremian
13 Natalie Haritonian
14 Attorneys for Plaintiff RODGER LEE
15 CAPPS, and all others similarly situated.
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DEMAND FOR JURY TRIAL

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

DATED: December 4, 2023

D.LAW, INC.

By: 
David Yeremian
Natalie Haritonian
Attorneys for Plaintiff RODGER LEE
CAPPS, 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.

Zander Chemers
Ogletree Deakins
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-330-0802
zander.chemers@ogletree.com

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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

[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.

Executed on December 4, 2023, at Glendale, California.


Silvia Pimentel