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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ROGELIO GARCIA and ABSHIR FARAH, individually, and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"),

Plaintiffs,

vs.

PROACTIVE BUSINESS SOLUTIONS, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23CV421189

SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, *ET SEQ.*

(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
(2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
(3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
(4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
(5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
(6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
(7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
(8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
(9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

(11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

Plaintiffs Rogelio Garcia and Abshir Farah, individually and on behalf of all other members of the public similarly situated, and as aggrieved employees and on behalf of all aggrieved employees, alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure section 382 and California Labor Code sections 2698, *et seq*. ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as non-exempt, hourly paid employees and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint. The monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs' share of damages, penalties, and other relief sought in this action does not exceed $75,000.

2. This Court has jurisdiction over Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action because there is no complete diversity, and this case falls within the statutory exceptions to "minimal diversity" jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information and belief, two-thirds or more of the class members and Defendants are citizens of California and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiffs in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Rogelio Garcia ("Plaintiff Garcia"), also known as Roy Garcia, is a resident of Hollister, in San Benito County, California. Defendants employed Plaintiff Garcia as an hourly paid, non-exempt employee from approximately May 2022 to February 2023. Plaintiff Garcia worked for Defendants as a Facilities Engineer, assigned to work on-site at semiconductor manufacturer Applied Materials' multiple campuses in Santa Clara and Sunnyvale, California. During his employment, Plaintiff Garcia typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff Garcia's primary job duties included, without limitation, responding to facilities service requests, overseeing facilities operations and projects, and monitoring and maintaining cleanroom and lab environments.

Plaintiff Abshir Farah ("Plaintiff Farah") was employed by Defendants in the non-exempt job position of "Material Courier" (or similarly titled position) at Applied Materials' Sunnyvale, California location. Plaintiff Farah was employed by Defendants from approximately November 5, 2021 until approximately March 26, 2023.

5. PROACTIVE BUSINESS SOLUTIONS, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

7. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10

were the partners, agents, owners, or managers of PROACTIVE BUSINESS SOLUTIONS, INC. at all relevant times.

8. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, PROACTIVE BUSINESS SOLUTIONS, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "PROACTIVE"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

10. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants provide outsourced IT consulting and services, such as data center relocation, facilities management, and cleanroom and lab construction, for the high-tech and semiconductor industry. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Oakland, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents,

indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Oakland, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

15. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

16. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

18. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor

Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

19. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period and that Plaintiffs and class members were not authorized and permitted to take compliant rest periods or provided with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and class members were not provided complete and accurate wage statements.

22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

should have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

26. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and class members that they were properly denied wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

27. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of

themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

28. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

29. Plaintiffs and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

30. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

31. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

32. On August 23, 2023, Plaintiff Garcia provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Garcia's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-977211-23. A true and correct copy of Plaintiff Garcia's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1." On

September 5, 2023, Plaintiff Farah provided notice to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff Farah's written notice to the LWDA and Defendants is attached hereto as "Exhibit 2."

33. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent the notices described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

34. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

36. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

37. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

38. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

40. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

41. Plaintiffs' proposed class consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

42. Plaintiffs' proposed subclass consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

43. Members of the Class and Subclass are referred to herein as "class members."

44. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

45. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiffs and class members;

(b) Whether Defendants failed to pay Plaintiffs and class members at least minimum wages for all hours worked;

(c) Whether Defendants failed to provide Plaintiffs and class members with meal periods;

(d) Whether Defendants failed to authorize and permit Plaintiffs and class members to take rest periods;

(e) Whether Defendants provided Plaintiffs and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(g) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiffs and class members upon their discharge;

(h) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiffs and class members during their employment;

(i) Whether Defendants failed to reimburse Plaintiffs and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(j) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(k) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

46. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) <u>Numerosity</u>: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

47. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

48. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

49. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

50. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

51. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and class members working more than twelve (12) hours in a day,

overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

52. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

53. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and class members were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

54. First, Defendants had, and continue to have, a company-wide policy and/or practice of discouraging and impeding Plaintiffs and class members from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Defendants discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from Defendants' supervisors. This policy of limiting overtime, coupled with Defendants' practice of understaffing and assignment of heavy workloads (*see infra*), led Plaintiffs and class members to perform various work-related tasks while off-the-clock, outside of their scheduled shifts.

55. For example, Plaintiffs and class members were required to respond to phone communications from management and/or on-site supervisors before and after their shifts or on their days off. For instance, at least twice per week, Plaintiffs was required to answer work-related phone calls from on-site employees and supervisors, while off-the-clock, to discuss facilities services requests. These communications could take up to 15 minutes per instance and could come in as late as 9:00 p.m., more than five (5) hours after Plaintiffs had

clocked out. Additionally, Defendants required Plaintiffs to take a company-issued laptop computer home with him so he would be able to access building management system software and look up pertinent information needed for these off-the-clock phone communications. Thus, Defendants failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Plaintiffs and class members received no compensation for this time.

56. Second, during the relevant period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their jobsites while assigning heavy workloads, resulting in a failure to provide Plaintiffs and class members with adequate meal period coverage. Defendants also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Plaintiffs and class members to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Plaintiffs and class members were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal periods. For example, Plaintiffs were required to complete and perform multiple cleanroom and lab inspections within several buildings, traveling across at least two (2) campuses, on a daily basis, while also addressing work-related questions from supervisors, which caused him to take shortened meal periods. Additionally, approximately twice per week, due to the lack of meal period coverage, Plaintiffs would have their meal periods interrupted because they were required to answer phone calls from their on-site supervisors and return to work immediately to assess an urgent situation. Thus, Plaintiffs and class members missed meal periods and/or had them interrupted to handle their assigned workloads and responsibilities, and Defendants did not pay Plaintiffs and class members for the time they continued to perform tasks during meal periods.

57. Third, during the relevant time period, Defendants implemented a company-wide policy and/or practice of automatically deducting meal periods from Plaintiffs' and class members' time records, instead of allowing employees to clock in and out for meal periods. As a result of this policy, Defendants falsified and deducted meal periods from Plaintiffs' and

class members' time records even when meal periods were missed, short, and/or interrupted. Thus, Defendants did not record all hours worked during meal periods, and Plaintiffs and class members performed work during meal periods for which they were not paid.

Fourth, Defendants also failed to properly calculate Plaintiff Farah's and other non-exempt employees overtime rates of pay due to their receipt of non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate.

58. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiffs and class members were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiffs and class members sometimes worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they actually worked.

59. Defendants' failure to pay Plaintiffs and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are entitled to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages

(Against all Defendants)

60. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so

fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

62. As set forth above, during the relevant time period, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked, because these hours were not accurately recorded. Plaintiffs and class members were required to perform work-related tasks while off-the-clock, such as responding to phone calls from management and/or on-site supervisors after their shifts, but discouraged and impeded Plaintiffs and class members from recording this time worked. Thus, Defendants failed to track this time Plaintiffs and class members spent working off-the-clock, and Plaintiffs and class members received no compensation for this time.

63. As also stated, due to Defendants' policies and/or practices of understaffing their jobsites while assigning heavy workloads, and failing to schedule meal periods, Plaintiffs and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, during the relevant time period, Defendants implemented a company-wide policy and/or practice of automatically deducting meal periods from Plaintiffs' and class members' time records, even when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked during meal periods, because these hours were not correctly recorded.

64. Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

65. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period Violations

(Against all Defendants)

66. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

67. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

68. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

69. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70. During the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Plaintiffs and class members from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, Defendants had company-wide practices and/or policies of failing to schedule meal periods, which further caused Plaintiffs and class members to not be relieved of their duties for compliant meal periods.

71. Defendants' practices and polices prevented Plaintiffs and class members from taking all compliant meal periods to which they were entitled. As a result, Plaintiffs and class members had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Plaintiffs frequently had their meal periods interrupted by management and/or on-site supervisors calling to discuss work-related items during their meal periods and by their requests to return to work immediately to address an urgent situation. Additionally, Plaintiffs sometimes had to take their meal periods late, in excess of than five (5) hours into their shift, due to the heavy workload and lack of coverage.

72. Additionally, as stated, Defendants implemented a company-wide policy and/or practice of automatically deducting meal periods from Plaintiffs' and class members' time records, instead of allowing employees to clock in and out for meal periods. As a result of this policy, Defendants deducted 30 minutes from Plaintiffs' and class members' time records even when meal periods were missed, short, interrupted, and/or late, instead of allowing employees to clock in and out for meal periods. Thus, Defendants systematically failed to correctly record meal periods.

73. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiffs and class members were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiffs and class members meal period premiums when meal periods were missed, shortened, interrupted,

and/or late.

74. Moreover, Defendants engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiffs and class members have not received premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

75. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations

(Against all Defendants)

76. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

77. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class members' employment by Defendants.

78. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

79. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest

periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

80. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including understaffing and assigning heavy workloads, prevented Plaintiffs and class members from being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiffs and class members not being authorized and permitted to take rest periods.

81. Furthermore, upon information and belief, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which effectively required that Plaintiffs and class members remain on the work premises during their rest periods. Because Plaintiffs and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiffs and class members during rest periods.

82. As a result of Defendants' practices and policies, Plaintiffs and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiffs had to forego nearly all of their rest periods because of the lack of coverage and Defendants' failure to schedule rest periods for employees.

83. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiffs and class members have not received premium pay for all missed rest periods. As a result, Defendants denied Plaintiffs and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

84. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

(Against all Defendants)

85. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

86. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

87. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically,

Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

88. Because Defendants did not record the time Plaintiffs and Subclass members spent working off the clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

89. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

90. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

91. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiffs and Subclass members, in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs' and Subclass members' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiffs and Subclass members.

92. Plaintiffs and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination

(Against all Defendants)

93. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

94. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

95. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

96. Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

97. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment

(Against all Defendants)

98. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

99. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiffs and class members during their employment.

100. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

101. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

102. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

103. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

104. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

(Against all Defendants)

105. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each and every allegation set forth above.

106. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by

the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen the employer requires the use of tools or equipment or are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the trade or craft . . . ."

107. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiffs and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, toward the beginning of their employment, Plaintiffs were required to use their personal cellular phone for work-related tasks, including responding to calls from managers and reviewing emails. Even after he received a company cellular phone, Defendants and other supervisory or managerial employees continued to contact Plaintiffs on their personal cellular phone. Plaintiffs were also required to download the mobile application for Microsoft Outlook onto their personal cellular phone in order to perform their job duties and respond to electronic communications in a timely manner. Although Defendants required Plaintiffs and class members to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

108. In addition, Defendants had a company-wide policy of requiring Plaintiffs and class members to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiffs were required to drive to and from Defendants' client's multiple campuses across Santa Clara and Sunnyvale, to complete daily, multiple cleanroom and lab inspections and also to attend to facilities services requests. Plaintiffs estimate having to drive approximately 10 miles per day in their personal vehicle to complete their assigned duties. Although Defendants required

Plaintiffs and class members to utilize their own vehicles to carry out their work-related responsibilities, Defendants did not reimburse them for their travel expenses.

109. Defendants could have provided Plaintiffs and class members with the actual equipment for use on the job, such as company mobile devices and vehicles; or Defendants could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, Defendants passed these operating costs off onto Plaintiffs and class members.

110. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiffs and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and class members for necessary business-related expenses and costs.

111. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

112. Plaintiffs incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

113. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

114. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with all required overtime pay, as alleged herein;

(b) Violation of Labor Code sections 1182.12. 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and other aggrieved employees with meal periods, as alleged herein;

(d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

(g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and

(i) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

115. Therefore, Plaintiffs and other aggrieved employees are entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

116. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

117. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

118. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants' unlawful business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

119. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq*.

120. A violation of California Business & Professions Code sections 17200, *et seq*. may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

(a) Requiring non-exempt, hourly paid employees, including Plaintiffs and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;

(b) Failing to pay at least minimum wage to Plaintiffs and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;

(c) Failing to provide all meal periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiffs and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204, as alleged herein; and

(g) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

121. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

122. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

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ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

123. Plaintiffs incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

124. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

125. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants' unfair business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

126. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiffs and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiffs and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

127. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute

acts against the public policy behind these laws.

128. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars ($25,000), exclusive of interest and costs. Plaintiffs reserves the right to amend their prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

4. That counsel for Plaintiffs be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiffs and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date

such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiffs and class members to take all rest periods;

24. That the Court make an award to the Plaintiffs and class members of one (l) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiffs and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiffs and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and

permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

57. For pre-judgment and post-judgment interest as provided by law; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class members all earned wages during employment, and failing to reimburse Plaintiffs and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

63. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiffs and class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

68. For pre-judgment and post-judgment interest as provided by law; and

For such other and further relief as the Court may deem equitable and appropriate.

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Dated: March 28, 2025

Respectfully submitted,

Capstone Law APC

By: ______________________________

Orlando Villalba
Helga Hakimi
Jaime Castaneda

Attorneys for Plaintiffs Rogelio Garcia and Abshir Farrah

EXHIBIT "1"

Capstone LAW APC

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August 23, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.tfaforms.net/308)

Subject: *Rogelio Garcia v. Proactive Business Solutions, Inc.*

Dear PAGA Administrator:

This office represents Rogelio Garcia, also known as Roy Garcia, in connection with his claims under the California Labor Code. Mr. Garcia was an employee of PROACTIVE BUSINESS SOLUTIONS, INC. ("PROACTIVE").

The employer may be contacted directly at the address below:

PROACTIVE BUSINESS SOLUTIONS, INC.
410 7TH STREET, #205
OAKLAND, CA 94607

Mr. Garcia intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Garcia seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PROACTIVE as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PROACTIVE employed Mr. Garcia as an hourly paid, non-exempt employee from approximately May 2022 to February 2023. Mr. Garcia worked for PROACTIVE as a Facilities Engineer, assigned to work on-site at semiconductor manufacturer Applied Materials' multiple campuses in Santa Clara and Sunnyvale, California. During his employment, Mr. Garcia typically worked eight (8) hours or more per day and five (5) days per week. At the time his employment ended, Mr. Garcia was compensated approximately $64.00 per hour. Mr. Garcia's job duties included, without limitation, responding to facilities service requests, overseeing facilities operations and projects, and monitoring and maintaining cleanroom and lab environments.

PROACTIVE committed one or more of the following Labor Code violations against Mr. Garcia, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c): [1]

PROACTIVE’s Company-Wide and Uniform Payroll and HR Practices

PROACTIVE BUSINESS SOLUTIONS, INC. is a California corporation. PROACTIVE provides outsourced IT consulting and services, such as data center relocation, facilities management, and cleanroom and lab construction, for the high-tech and semiconductor industry. Upon information and belief, PROACTIVE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakland, California, for all non-exempt, hourly paid employees working for PROACTIVE in California, including Mr. Garcia and other aggrieved employees. At all relevant times, PROACTIVE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Garcia and other aggrieved employees, regardless of their location or position.

Upon information and belief, PROACTIVE maintains a centralized Payroll department at its corporate headquarters in Oakland, California, which processes payroll for all non-exempt, hourly paid employees working for PROACTIVE in California, including Mr. Garcia and other aggrieved employees. Further, PROACTIVE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Garcia and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PROACTIVE utilized the same methods and formulas when calculating wages due to Mr. Garcia and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PROACTIVE willfully failed to pay all overtime wages owed to Mr. Garcia and other aggrieved employees. During the relevant time period, Mr. Garcia and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

[1] These facts, theories, and claims are based on Mr. Garcia’s experience and counsel’s review of those records currently available relating to Mr. Garcia’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Garcia reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, PROACTIVE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Garcia and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. PROACTIVE discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from PROACTIVE's supervisors. This policy of limiting overtime, coupled with PROACTIVE's practice of understaffing and assignment of heavy workloads (*see infra*), led Mr. Garcia and other aggrieved employees to perform various work-related tasks while off-the-clock, outside of their scheduled shifts.

For example, Mr. Garcia and other aggrieved employees were required to respond to phone communications from management and/or on-site supervisors before and after their shifts or on their days off. For instance, at least twice per week, Mr. Garcia was required to answer work-related phone calls from on-site employees and supervisors, while off-the-clock, to discuss facilities services requests. These communications could take up to 15 minutes per instance and could come in as late as 9:00 p.m., more than five (5) hours after Mr. Garcia had clocked out. Additionally, PROACTIVE required Mr. Garcia to take a company-issued laptop computer home with him so he would be able to access building management system software and look up pertinent information needed for these off-the-clock phone communications. Thus, PROACTIVE failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Garcia and other aggrieved employees received no compensation for this time.

Second, during the relevant period, PROACTIVE had, and continues to have, a company-wide policy and/or practice of understaffing its jobsites while assigning heavy workloads, resulting in a failure to provide Mr. Garcia and other aggrieved employees with adequate meal period coverage. PROACTIVE also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Garcia and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Garcia and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Garcia was required to complete and perform multiple cleanroom and lab inspections within several buildings, traveling across at least two (2) campuses, on a daily basis, while also addressing work-related questions from supervisors, which caused him to take shortened meal periods. Additionally, approximately twice per week, due to the lack of meal period coverage, Mr. Garcia would have his meal periods interrupted because he was required to answer phone calls from his on-site supervisors and return to work immediately to assess an urgent situation. Thus, Mr. Garcia and other aggrieved employees missed meal periods and/or had them interrupted to handle their assigned workloads and responsibilities, and PROACTIVE did not pay Mr. Garcia and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, during the relevant time period, PROACTIVE implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Garcia's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods. As a result of this policy, PROACTIVE falsified and deducted meal periods from Mr. Garcia's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, PROACTIVE did not record all hours worked during meal periods, and Mr. Garcia and other aggrieved employees performed work during meal periods for which they were not paid.

PROACTIVE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Garcia and other aggrieved employees were performing assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Garcia and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Garcia and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, PROACTIVE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PROACTIVE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PROACTIVE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, PROACTIVE failed to pay all overtime wages by paying a lower overtime rate than required.

PROACTIVE's failure to pay Mr. Garcia and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages</u>

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 16-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

As set forth above, during the relevant time period, due to PROACTIVE's restrictions on overtime accrual, PROACTIVE systematically failed to pay Mr. Garcia and other aggrieved employees for actual hours worked, because these hours were not accurately recorded. Mr. Garcia and other aggrieved employees were required to perform work-related tasks while off-the-clock, such as responding to phone calls from management and/or on-site supervisors after their shifts, but discouraged and impeded Mr. Garcia and other aggrieved employees from recording this time worked. Thus, PROACTIVE failed to track this time Mr. Garcia and other aggrieved employees spent working off-the-clock, and Mr. Garcia and other aggrieved employees received no compensation for this time.

As also stated, due to PROACTIVE's policies and/or practices of understaffing its jobsites while assigning heavy workloads, and failing to schedule meal periods, Mr. Garcia and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, during the relevant time period, PROACTIVE implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Garcia's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, PROACTIVE systematically failed to pay Mr. Garcia and other aggrieved employees for actual hours worked during meal periods, because these hours were not correctly recorded.

Thus, PROACTIVE did not pay at least minimum wages for all hours worked by Mr. Garcia and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, PROACTIVE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, PROACTIVE regularly failed to pay at least minimum wages to Mr. Garcia and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, PROACTIVE had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Garcia and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, PROACTIVE had company-wide practices and/or policies of failing to schedule meal periods, which further caused Mr. Garcia and other aggrieved employees to not be relieved of their duties for compliant meal periods.

PROACTIVE's practices and policies prevented Mr. Garcia and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Garcia and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Garcia frequently had his meal periods interrupted by management and/or on-site supervisors calling to discuss work-related items during his meal periods and by their requests to return to work immediately to address an urgent situation. Additionally, Mr. Garcia sometimes had to take his meal periods late, in excess of five (5) hours into his shift, due to the heavy workload and lack of coverage.

Additionally, as stated, PROACTIVE implemented a company-wide policy and/or practice of automatically deducting meal periods from Mr. Garcia's and other aggrieved employees' time records, instead of allowing employees to clock in and out for meal periods. As a result of this policy, PROACTIVE deducted 30 minutes from Mr. Garcia's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late, instead of allowing employees to clock in and out for meal periods. Thus, PROACTIVE systematically failed to correctly record meal periods.

Further, PROACTIVE did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

PROACTIVE knew or should have known that as a result of its company-wide policies and/or practices, Mr. Garcia and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PROACTIVE further knew or should have known that it did not pay Mr. Garcia and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, PROACTIVE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Garcia and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that PROACTIVE did pay other aggrieved employees for missed, late, and interrupted meal periods, PROACTIVE did not pay other aggrieved employees at the correct rate of pay for premiums because PROACTIVE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when other aggrieved employees received meal period premiums and these other forms of pay, PROACTIVE failed to pay full meal period premiums by paying a lower rate than required.

Accordingly, PROACTIVE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods</u>

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 273 (2016).

During the relevant time period, PROACTIVE regularly failed to authorize and permit Mr. Garcia and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PROACTIVE's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Garcia and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PROACTIVE failed to schedule rest periods, which, coupled with PROACTIVE's failure to provide adequate rest period coverage, further led to Mr. Garcia and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, PROACTIVE maintained a company-wide on-premises rest period policy, which mandated that Mr. Garcia and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Garcia and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, PROACTIVE effectively maintained control over Mr. Garcia and other aggrieved employees during rest periods.

As a result of PROACTIVE's practices and policies, Mr. Garcia and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Garcia had to forego nearly all of his rest periods because of the lack of coverage and PROACTIVE's failure to schedule rest periods for employees.

PROACTIVE also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Garcia and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PROACTIVE did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PROACTIVE did not pay other aggrieved employees at the correct rate of pay for premiums because PROACTIVE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PROACTIVE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PROACTIVE has not provided Mr. Garcia and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PROACTIVE has knowingly and intentionally provided Mr. Garcia and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PROACTIVE issued uniform wage statements to Mr. Garcia and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, PROACTIVE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PROACTIVE did not record the time Mr. Garcia and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), PROACTIVE did not list the correct amount of gross wages and net wages earned by Mr. Garcia and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PROACTIVE failed to accurately list the total number of hours worked by Mr. Garcia and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because PROACTIVE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, PROACTIVE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). PROACTIVE also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PROACTIVE willfully failed to maintain accurate payroll records for Mr. Garcia and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PROACTIVE engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Garcia and other aggrieved employees, in violation of section 1198. Furthermore, in light of PROACTIVE's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PROACTIVE kept no records of meal start and end times for second meal periods.

Because PROACTIVE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Garcia and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Garcia and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PROACTIVE failed to pay Mr. Garcia and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, PROACTIVE willfully failed to pay Mr. Garcia and other aggrieved employees who are no longer employed by PROACTIVE all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving PROACTIVE's employ.

Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, PROACTIVE did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, PROACTIVE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PROACTIVE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, PROACTIVE failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, PROACTIVE paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

PROACTIVE's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l) and/or 248.6(b)(3)(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, PROACTIVE had a company-wide policy of requiring Mr. Garcia and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but PROACTIVE failed to reimburse them for the costs of their work-related mobile device expenses. For example, toward the beginning of his employment, Mr. Garcia was required to use his personal cellular phone for work-related tasks, including responding to calls from managers and reviewing emails. Even after he received a company cellular phone, PROACTIVE and other supervisory or managerial employees continued to contact Mr. Garcia on his personal cellular phone. Mr. Garcia was also required to download the mobile application for Microsoft Outlook onto his personal cellular phone in order to perform his job duties and respond to electronic communications in a timely manner. Although PROACTIVE required Mr. Garcia and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PROACTIVE failed to reimburse them for these costs.

In addition, PROACTIVE had a company-wide policy of requiring Mr. Garcia and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Garcia was required to drive to and from PROACTIVE's client's multiple campuses across Santa Clara and Sunnyvale, to complete daily, multiple cleanroom and lab inspections and also to attend to facilities services requests. Mr. Garcia estimates having to drive approximately 10 miles per day in his personal vehicle to complete his assigned duties. Although PROACTIVE required Mr. Garcia and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, PROACTIVE did not reimburse them for their travel expenses.

PROACTIVE could have provided Mr. Garcia and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and vehicles; or PROACTIVE could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, PROACTIVE passed these operating costs off onto Mr. Garcia and other aggrieved employees.

Thus, PROACTIVE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." PROACTIVE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Garcia's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Garcia seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Garcia, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PROACTIVE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Garcia seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Alexander Lima

Copy: PROACTIVE BUSINESS SOLUTIONS, INC. (via U.S. Certified Mail)

Capstone Law, APC
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Los Angeles, CA. 90067

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EXHIBIT “2”

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

September 5, 2023

<u>VIA LWDA WEBSITE</u>

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Abshir Farah v. Proactive Business Solutions, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Abshir Farah ("Mr. Farah") in claims arising from his employment with Proactive Business Solutions, Inc; Applied Materials, Inc.; and Does 1 through 100 (collectively "Defendants"). Mr. Farah is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Defendant's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

Defendant Applied Materials is in the business of providing manufacturing equipment, services, and software to the semiconductor, display, and related industries. Defendant ProActive is in the business of providing short- and long-term staffing. Defendants employed Mr. Farah in the non-exempt job position of "Material Courier" (or similarly titled position) at Applied Materials' Sunnyvale, California location. Mr. Farah was employed by Defendants from approximately November 5, 2021 until approximately March 26, 2023.

During Mr. Farah's employment with Defendants, Defendants utilized a timekeeping system which resulted in Mr. Farah and other aggrieved employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Upon information and belief, Mr. Farah and other aggrieved employees did not record their own time, and Defendant's supervisors failed to accurately record Mr. Farah and other aggrieved employees' hours worked, resulting in unpaid minimum and overtime wages. Upon information and belief, this timekeeping system used by Defendants recorded hours worked to the minute; however, Defendants rounded Mr. Farah and other aggrieved employees' hours, so that over a period of time they were deprived of all minimum and overtime wages. Defendants' timekeeping policies/practices were not even-handed and have resulted in Mr. Farah and other aggrieved employees not being compensated for all hours worked.

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Defendants also failed to properly calculate Mr. Farah and other aggrieved employees overtime rates of pay due to their receipt of non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay").

Defendants failed to provide Mr. Farah and other aggrieved employees with all legally compliant meal periods due to Defendants' meal period policies/practices, which have resulted in missed, late (commencing after the fifth hour of work) and short (less than 30 minutes) first meal periods. Defendants did not require Mr. Farah and other aggrieved employees to record their meal periods. Furthermore, Mr. Farah often worked shifts in excess of 10.0 hours but was not provided a second meal period, due to Defendants' meal period policies/practices, which failed to provide second meal periods for shifts in excess of 10.0 hours. On those occasions when Mr. Farah was not provided with all legally-required meal periods to which he was entitled, Defendants failed to compensate Mr. Farah and other aggrieved employees with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

Defendants have also failed to authorize and permit all required rest periods for Mr. Farah and other aggrieved employees. Specifically, Defendants have often failed to authorize and permit a 10-minute period of net rest for every four hours worked or major fraction thereof due to work demands imposed by Defendants. On those occasions when Mr. Farah was not authorized and permitted all legally required rest periods to which he was entitled, Defendants failed to compensate Mr. Farah and other aggrieved employees with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

As a result of Defendants' failure to compensate Mr. Farah and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements. As a further result of Defendants' failure to compensate Mr. Farah and other aggrieved employees for all minimum wages, overtime wages, and all meal and rest period premium wages, Defendants failed to pay Mr. Farah and other aggrieved employees all wages owed at the time of their separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Minimum Wage Violations

Defendants were required to pay Mr. Farah and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197; Wage Order 1, § 4. As alleged above, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Mr. Farah and other aggrieved employees for all hours worked, including, but not limited to, all hours they were subject to the control of HL Welding and/or suffered or permitted to work under the California Labor Code and Wage Order 1. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Farah and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Defendants were required to properly pay Mr. Farah and other aggrieved employees for all overtime hours worked pursuant to Labor Code § 1194 and Wage Order 1 § 3. As alleged above, Defendants caused Mr. Farah and other aggrieved employees to work overtime hours, but failed to credit these employees with all overtime hours actually worked. As a result of these policies/practices, Mr. Farah and other aggrieved employees were not compensated for all overtime and double-time wages.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Farah and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 11, § 11. As a result, Mr. Farah and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Defendants also failed to authorize and permit Mr. Farah and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Mr. Farah and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

<u>Wage Statement Violations</u>

Defendants were required to furnish Mr. Farah and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned, and the address of the legal entity that is the employer. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As alleged above, Defendants issued wage statements which failed to list the address of the legal entity of the employer. Furthermore, as a result of Defendant's failure to pay all overtime, minimum, and double-time wages, and failure to pay all required meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Farah and other aggrieved employees in violation of Labor Code § 226. Mr. Farah's failure to comply with its wage statement obligations was knowing and intentional, and Mr. Farah and other aggrieved employees have suffered injury as a result.

<u>Waiting Time Penalties</u>

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Farah and other aggrieved employees all of their final wages at the time of separation, which included all overtime, double-time, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, HL Welding's failure to pay all final wages due to Mr. Farah and other aggrieved employees was willful and, consequently, entitles Mr. Farah and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Farah will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Farah's own investigation, and on information and belief, Defendants committed and continues to commit the following Labor Code violations:

a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Farah and other aggrieved employees the statutory minimum wage for all hours worked;

b. Defendants violated Labor Code §§ 204, 510, 1194, and 1198 by failing to pay Mr. Farah and other aggrieved employees all overtime compensation earned;

c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Farah and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Farah and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Farah and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

e. Defendants violated Labor Code § 226 by failing to furnish Mr. Farah and other aggrieved employees with accurate and compliant itemized wage statements;

f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Farah and other aggrieved employees;

g. Defendants violated Labor Code § 204 by failing to pay Mr. Farah and other aggrieved employees all wages earned at least twice during each calendar month; and

h. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Farah and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and HL Welding if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

Paul K. Haines

cc: Proactive Business Solutions, Inc. (via certified mail)
Applied Materials, Inc. (via certified mail)

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PROACTIVE BUSINESSSOLUTIONS INC
C/O: SHARON F MERANDA
1290 B ST STE 208
HAYWARD CA 94541-2996

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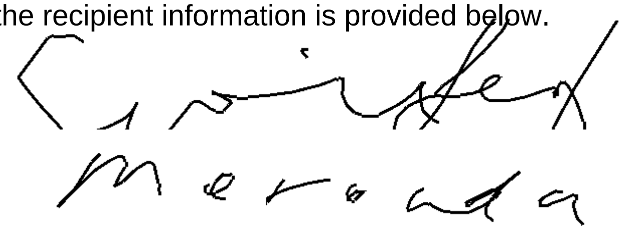

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 28, 2025**, I served the document described as: **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

Mollie M. Burks mburks@grsm.com Sat Sang Khalsa skhalsa@grsm.com GORDON REES SCULLY MANSUKHANI, LLP 275 Battery Street, Suite 2000 San Francisco, CA 94111 Telephone: (415) 986-5900 Facsimile: (415) 986-8054	*Registered Agent for Defendant:* PROACTIVE BUSINESS SOLUTIONS, INC.

[ ] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[ ] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[ ] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

[**X**] **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

[ ] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 28, 2025,** at Los Angeles, California.

Riley McIntire	
Type/Print Name	Signature