

VIA ON-LINE SUBMISSION AND MAIL:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
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**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Wynn v. Avanath Communities, Inc., et al.***

Gentlepersons:

This office represents Plaintiff Paul Nathan Wynn (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Avanath Communities, Inc., Avanath Realty, Inc., Avanath Capital Management, LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along Plaintiff's Class Action Complaint, which is attached hereto and incorporated by reference herein. The Complaint is being concurrently filed in Monterey County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Defendants had a common policy and practice of systemically failing to pay Plaintiff and Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiff and Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Plaintiff and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Plaintiff and Aggrieved Employees by systematically undercompensating them.

Next, Defendants had a common policy and practice of automatically deducting time for alleged unpaid meal periods which were systemically denied in violation of California law; Plaintiff and Aggrieved Employees' unpaid meal periods were often shorter than the unpaid time recorded for meal periods, or were systemically interrupted with work.

Finally, Plaintiff and Aggrieved Employees were required to remain on-call outside of their usual scheduled shifts, and remain readily available to work, immediately upon Defendants' requests. Plaintiff and Aggrieved Employees were not left free and unrestricted during on-call working hours, and were not free to pursue personal interests without restriction.

The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid. This uncompensated time caused Plaintiff and Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve(12) hours a day and/or forty (40) hours a week, entitling Plaintiff and Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Moreover, Defendants failed to pay Plaintiff and Aggrieved Employees at the applicable and proper regular rates of pay for overtime, and double-time, hours worked. Specifically, Plaintiff and Aggrieved Employees received performance-based, non-discretionary, bonuses in addition to their hourly pay. However, Defendants failed to adjust Plaintiffs' and Aggrieved Employees' regular



rates of pay by failing to incorporate the value of the bonus when calculating the overtime pay.

Defendants further failed to incorporate all bonuses earned and other remunerations into Plaintiffs' and Class Member's regular rates of pay when calculating meal and rest period premiums.

Defendants failed to properly calculate Plaintiffs' and the Aggrieved Employees' regular rate of pay because Defendants failed to include all forms of compensation in the regular rate including bonuses, and other compensation.

Defendants had a common policy and practice of systemically denying Plaintiff and Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. As discussed above, Defendants had a common policy and practice of automatically deducting time for alleged unpaid meal periods which were systemically denied. As such, Defendants failed to properly track and record Plaintiff and Aggrieved Employees meal periods. Additionally, what meal periods were taken by Plaintiff and Aggrieved Employees were regularly taken late, or after the completion of their fifth hour of work, under 30 minutes, and regularly interrupted by work related tasks.

Additionally, Plaintiff and Aggrieved Employees were regularly required to work in excess of ten (10) and twelve (12) hours a day while never being provided second, uninterrupted and duty-free meal periods, to commence prior to the completion of their tenth hour of work, all in violation of California law.

Plaintiff and Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Plaintiff and Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. Plaintiff and Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Plaintiff and Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their rest breaks due to the excessive workload and having to keep, maintain, and monitor their personal cellular phones, to respond to work-related messages during unpaid breaks.

Furthermore, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied.

Plaintiff and Aggrieved Employees were not provided with accurate wage statements as mandated



by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing.” Additionally, the wage statements issued to Plaintiff and Aggrieved Employees were not recorded in “ink or other indelible form.”

Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff’s and Aggrieved Employees’ wage statement were only provided in electronic format in violation of Labor Code § 226.

Plaintiff and Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant’s employ. Specifically, Plaintiff and Aggrieved Employees were required to purchase a cellular phone and cellular phone service, purchase their own work tools, and incur gas and mileage expenses, all necessary for Plaintiff and Aggrieved Employees to execute their duties under Defendants’ employ, and for which no reimbursements were paid.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:¹

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

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

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants had a common policy and practice of systemically failing to pay Plaintiff and Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiff and Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Plaintiff and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants’ payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants’ control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Plaintiff and Aggrieved Employees by systematically undercompensating them.



Next, Defendants had a common policy and practice of automatically deducting time for alleged unpaid meal periods which were systemically denied in violation of California law; Plaintiff and Aggrieved Employees' unpaid meal periods were often shorter than the unpaid time recorded for meal periods, or were systemically interrupted with work.

Finally, Plaintiff and Aggrieved Employees were required to remain on-call outside of their usual scheduled shifts, and remain readily available to work, immediately upon Defendants' requests. Plaintiff and Aggrieved Employees were not left free and unrestricted during on-call working hours, and were not free to pursue personal interests without restriction.

The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked "pre-shift" and "post-shift" without compensation and time spent working while clocked out for meal breaks caused Plaintiff and Aggrieved Employees to work in excess of eight (8), ten (10),



and twelve (12) hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate. Defendants failed to pay Plaintiff and Aggrieved Employees at the applicable and proper regular rates of pay for overtime, and double-time, hours worked. Specifically, Plaintiff and Aggrieved Employees received performance-based, non-discretionary, bonuses in addition to their hourly pay. However, Defendants failed to adjust Plaintiffs' and Aggrieved Employees' regular rates of pay by failing to incorporate the value of the bonus when calculating the overtime pay. Defendants further failed to incorporate all bonuses earned and other remunerations into Plaintiffs' and Class Member's regular rates of pay when calculating meal and rest period premiums.

Defendants failed to properly calculate Plaintiffs' and the Aggrieved Employees' regular rate of pay because Defendants failed to include all forms of compensation in the regular rate including bonuses, and other compensation.

Additionally, all the uncompensated time, discussed above, was under the direction and control of Defendants, for which no wages were paid. This uncompensated time caused Plaintiff and Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff and Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.



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

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Plaintiff and Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. As discussed above, Defendants had a common policy and practice of automatically deducting time for alleged unpaid meal periods which were systemically denied. As such, Defendants failed to properly track and record Plaintiff and Aggrieved Employees meal periods. Additionally, what meal periods were taken by Plaintiff and Aggrieved Employees were regularly taken late, or after the completion of their fifth hour of work, under 30 minutes, and regularly interrupted by work related tasks.

Plaintiff and Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work through their rest breaks, which were systemically denied.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Plaintiff and Aggrieved Employees were required to purchase a cellular phone and cellular phone service, purchase their own work tools, and incur gas and mileage expenses, all necessary for Plaintiff and Aggrieved Employees to execute their duties under Defendants' employ, and for which no reimbursements were paid in violation of Labor Code § 2802.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from



the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work



shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code §§ 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved



Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor



Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

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

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

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

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

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available



and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.

David Yeremian

Cc: Avanath Communities, Inc., Avanath Realty, Inc., Avanath Capital Management, LLC, by
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8 Attorneys for Plaintiff PAUL NATHAN WYNN

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SACRAMENTO

11 PAUL NATHAN WYNN, on behalf of
12 himself and all others similarly situated,
and the general public,

13 *Plaintiff,*

14 v.

15 AVANATH COMMUNITIES, INC., a
16 California Corporation; AVANATH
REALTY, INC., a California Corporation
17 AVANATH CAPITAL MANAGEMENT,
18 LLC, a Delaware Corporation; and DOES 1
through 50, inclusive,

19 *Defendants.*
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27
28

Case No.:

CLASS ACTION COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff PAUL NATHAN WYNN (“Plaintiff”), on behalf of himself, all others similarly
2 situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants AVANATH COMMUNITIES,
5 INC., a California Corporation; AVANATH REALTY, INC., a California Corporation AVANATH
6 CAPITAL MANAGEMENT, LLC, a Delaware Corporation; and DOES 1 through 50, inclusive,
7 (collectively referred to as “Defendants”) for alleged violations of the California Labor Code and
8 California Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 9 a. failed to pay them minimum and overtime wages at the correct rate;
- 10 b. failed to pay them double time wages at the correct rate;
- 11 c. failed to pay them overtime and/or double time wages by failing to include all
12 applicable remuneration in calculating the regular rate of pay;
- 13 d. failed to provide them with meal periods;
- 14 e. failed to provide them with rest periods;
- 15 f. failed to pay them premium wages for missed meal and rest periods;
- 16 g. failed to provide them with accurate written wage statements;
- 17 h. failed to reimburse them with necessary business expenditures; and
- 18 i. failed to pay them all of their final wages following separation of employment.

19 Based on these alleged Labor Code violations, Plaintiff now brings this class action to recover
20 unpaid wages, liquidated damages, penalties, restitution and related relief on behalf of himself, all
21 others similarly situated, and the general public.

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction to hear this case because the monetary
24 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
25 of the Superior Court of the State of California.

26 3. Venue is proper in the County of Sacramento pursuant to Code of Civil Procedure
27 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
28 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

1 maintains offices, transacts business and/or has an agent therein.

2 4. Venue is proper in Sacramento County because Defendants' have at all times alleged
3 herein, conducted business in Sacramento County, and throughout California. As such, venue is
4 proper in any county in California.

5 **PARTIES**

6 5. Plaintiff PAUL NATHAN WYNN is, and at all relevant times mentioned herein, an
7 individual residing in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges that Defendant AVANATH
9 COMMUNITIES, INC., is, and at all relevant times mentioned herein, a California corporation doing
10 business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges that Defendant AVANATH
12 REALTY, INC., is, and at all relevant times mentioned herein, a California corporation doing
13 business in the State of California.

14 8. Plaintiff is informed and believes, and thereupon alleges that Defendant AVANATH
15 CAPITAL MANAGEMENT, LLC., is, and at all relevant times mentioned herein, a Delaware
16 corporation doing business in the State of California.

17 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
18 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
19 will amend this Complaint to allege the true names and capacities of the DOE defendants when
20 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
21 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
22 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
23 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
24 defendants when ascertained.

25 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
26 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
27 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
28 or all of the other defendants, and in doing the things alleged herein, were acting within the course

1 and scope of such relationship and with the full knowledge, consent and ratification by such other
2 defendants.

3 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
4 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
5 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
6 and omissions alleged herein.

7 12. This action has been brought and may be maintained as a class action pursuant to Code
8 of Civil Procedure section 382 because there is a well-defined community of interest among the
9 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
10 unaware of any difficulties likely to be encountered in managing this case as a class action.

11 13. **Relevant Time Period:** The relevant time period is defined as the time period
12 beginning four years prior to the filing of this action until judgment is entered.

- 13 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
14 separately, and/or any staffing agencies and/or any other third parties in hourly or
15 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action (“Hourly Employee
Class”).
- 16 b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in
17 a shift in excess of five hours during the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.
- 18 c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a
19 shift of at least three and one-half (3.5) hours the four years prior to the filing of
this action and ending on the date that final judgment is entered in this action.
- 20 d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
21 separated from their employment with Defendants during the period beginning
22 three years before the filing of this action and ending when final judgment is
entered.
- 23 e. **Wage Statement Class:** All persons employed by Defendants in California during
24 the period beginning one year before the filing of this action and ending when final
judgment is entered..
- 25 f. **Expense Reimbursement Class:** All persons employed by Defendants in
California who incurred business expenses during the **Relevant Time Period**.
- 26 g. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class**
27 members employed by Defendants in California during the four years prior to the
filing of this action and ending on the date that final judgment is entered in this
28 action.

1 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
2 to amend or modify the class definitions with greater specificity, by further division into sub-classes
3 and/or by limitation to particular issues.

4 15. **Numerosity:** The class members are so numerous that the individual joinder of each
5 individual class member is impractical. While Plaintiff does not currently know the exact number of
6 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
7 exceeds the minimum required for numerosity under California law.

8 16. **Commonality and Predominance:** Common questions of law and fact exist as to all
9 class members and predominate over any questions which affect only individual class members.
10 These common questions include, but are not limited to:

- 11 a. Whether Defendants maintained a policy or practice of failing to provide
12 employees with their rest periods;
- 13 b. Whether Defendants maintained a policy or practice of failing to provide
14 employees with their meal periods;
- 15 c. Whether Defendants failed to pay premium wages to class members when they
16 have not been provided with meal and rest periods at the appropriate rates of pay;
- 17 d. Whether Defendants failed to pay minimum and/or overtime wages to class
18 members for all time worked, at the correct rates of pay;
- 19 e. Whether Defendants failed to provide class members with accurate written wage
20 statements as a result of providing them with written wage statements with
21 inaccurate entries for, among other things, amounts of gross and net wages, and
22 total hours worked;
- 23 f. Whether Defendants applied policies or practices that result in late and/or
24 incomplete final wage payments;
- 25 g. Whether Defendants failed to reimburse class members for all necessary business
26 expenses incurred during the discharge of their duties;
- 27 h. Whether Defendants are liable to class members for waiting time penalties under
28 Labor Code section 203; and

i. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

17. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

21. Plaintiff worked for Defendants as a non-exempt employee during the relevant and statutory periods.

22. Defendants had a common policy and practice of systemically failing to pay Plaintiff

1 and Class members proper wages and overtime for all hours worked, at the proper rates of pay. First,
2 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
3 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay
4 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
5 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
6 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
7 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
8 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
9 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
10 them.

11 23. Next, Defendants had a common policy and practice of automatically deducting time
12 for alleged unpaid meal periods which were systemically denied in violation of California law;
13 Plaintiff and Class Members' unpaid meal periods were often shorter than the unpaid time recorded
14 for meal unpaid periods, or were systemically interrupted with work.

15 24. Finally, Plaintiff and Class Members were required to remain on-call outside of their
16 usual scheduled shifts, and remain readily available to work, immediately upon Defendants' requests.
17 Plaintiff and Class Members were not left free and unrestricted during on-call working hours, and
18 were not free to pursue personal interests without restriction. Plaintiff and Class Members were never
19 paid stipends for either controlled or uncontrolled on-call or stand-by working hours.

20 25. The forgoing and uncompensated working time was under the direction and control of
21 Defendants, for which no wages were paid. This uncompensated time caused Plaintiff and Class
22 Members to work in excess of eight (8), ten (10) and/or twelve(12) hours a day and/or forty (40)
23 hours a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they
24 were systemically denied.

25 26. Moreover, Defendants failed to pay Plaintiff and Class Members at the applicable and
26 proper regular rates of pay for overtime, and double-time, hours worked. Specifically, Plaintiff and
27 Class Members received performance-based, non-discretionary, bonuses in addition to their hourly
28 pay. However, Defendants failed to adjust Plaintiffs' and Class Members' regular rates of pay by

1 failing to incorporate the value of the bonus when calculating the overtime pay.

2 27. Defendants further failed to incorporate all bonuses earned and other remunerations
3 into Plaintiffs' and Class Member's regular rates of pay when calculating meal and rest period
4 premiums.

5 28. Defendants failed to properly calculate Plaintiffs' and the Class Members' regular rate
6 of pay because Defendants failed to include all forms of compensation in the regular rate including
7 bonuses, and other compensation.

8 29. Defendants had a common policy and practice of systemically denying Plaintiff and
9 Class Members the opportunity to take meal periods in compliance with the California Law. As
10 discussed above, Defendants had a common policy and practice of automatically deducting time for
11 alleged unpaid meal periods which were systemically denied. As such, Defendants failed to properly
12 track and record Plaintiff and Class Members meal periods. Additionally, what meal periods were
13 taken by Plaintiff and Class Members were regularly taken late, or after the completion of their fifth
14 hour of work, under 30 minutes, and regularly interrupted by work related tasks.

15 30. Additionally, Plaintiff and Class Members were regularly required to work in excess
16 of ten (10) and twelve (12) hours a day while never being provided second, uninterrupted and duty-
17 free meal periods, to commence prior to the completion of their tenth hour of work, all in violation of
18 California law.

19 31. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
20 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
21 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
22 take their meal periods, or that advised Class Members of their meal and rest period rights; and (3)
23 Defendants' practice of requiring putative class members to continue working through their meal and
24 rest periods due to the excessive workload.

25 32. Defendants had a common policy and practice of systemically denying Plaintiff and
26 Class Members the opportunity to take meal periods in compliance with the California Law. Plaintiff
27 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
28 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest

1 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
2 no formal compliant written rest period policy that encouraged employees to take their rest periods,
3 or that properly advised Plaintiff and Class Members of their rest period rights; (3) Defendants' policy
4 and practice of requiring putative class members to continue working through their rest breaks due to
5 the excessive workload.

6 33. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
7 wages at their appropriate regular rates of pay for each meal and rest period denied.

8 34. Plaintiff and Class Members were not provided with accurate wage statements as
9 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
10 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
11 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
12 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in "ink
13 or other indelible form."

14 35. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
15 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

16 36. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
17 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
18 not included.

19 37. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
20 were not accurately reflected in that: all hours worked, including overtime, were not included.

21 38. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
22 hourly rates in effect during the pay period and the corresponding number of hours worked at each
23 hourly rate by the employee" were not accurately reflected in that: all hours worked, including
24 overtime, were not included.

25 39. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
26 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
27 Plaintiff's and Class Members' wage statement were only provided in electronic format in violation
28 of Labor Code § 226.

40. Plaintiff and Class Members were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff and Class Members were required to purchase a cellular phone and cellular phone service, purchase their own work tools, and incur gas and mileage expenses, all necessary for Plaintiff and Class Members to execute their duties under Defendants' employ, and for which no reimbursements were paid.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, 1174, and 1198)

(Plaintiff and Meal Period Sub-Class)

41. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully alleged herein.

42. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendant entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

43. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

44. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

45. Compensation for missed meal periods constitutes wages within the meaning of Labor Code section 200.

46. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

47. Section 11 of the applicable Wage Order states:

1 “No employer shall employ any person for a work period of more than five (5) hours
2 without a meal period of not less than 30 minutes, except that when a work period of
3 not more than six (6) hours will complete the day’s work the meal period may be
4 waived by mutual consent of the employer and employee. Unless the employee is
5 relieved of all duty during a 30 minute meal period, the meal period shall be considered
6 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an employee from being
relieved of all duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

7 48. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
8 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
9 members were not subject to valid on-duty meal period agreements with Defendants.

10 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
12 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
13 hour work period, as required by Labor Code section 512 and the applicable Wage Order. Defendants
14 had a common policy and practice of systemically denying Plaintiff and **Meal Period Sub-Class**
15 members the opportunity to take meal periods in compliance with the California Law. As discussed
16 above, Defendants had a common policy and practice of automatically deducting time for alleged
17 unpaid meal periods which were systemically denied. As such, Defendants failed to properly track
18 and record Plaintiff and **Meal Period Sub-Class** members meal periods. Additionally, what meal
19 periods were taken by Plaintiff and **Meal Period Sub-Class** members were regularly taken late, or
20 after the completion of their fifth hour of work, under 30 minutes, and regularly interrupted by work
21 related tasks.

22 50. Additionally, Plaintiff and **Meal Period Sub-Class** members were regularly
23 required to work in excess of ten (10) and twelve (12) hours a day while never being provided second,
24 uninterrupted and duty-free meal periods, to commence prior to the completion of their tenth hour
25 of work, all in violation of California law.

26 51. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
28 **Class** members when they worked five (5) hours without clocking out for any meal period.

1 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
2 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
3 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
4 them premium wages as required by Labor Code 512 and the applicable Wage Order.

5 53. Moreover, Defendants written policies fail to inform Meal period Class Members of
6 their meal period rights under the Labor Code and applicable Wage Orders.

7 54. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
8 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
9 regular rates of pay when required meal periods were not provided.

10 55. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
11 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
12 thereon, and costs of suit.

13 56. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
14 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the
15 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REST PERIODS**

18 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

19 **(Plaintiff and Rest Period Sub-Class)**

20 57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 58. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
23 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
24 Code and the applicable Wage Order.

25 59. Section 12 of the applicable Wage Order imposes an affirmative obligation on
26 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
27 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
28 middle of each work period insofar as practicable.

1 60. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
2 employers from requiring employees to work during required rest periods and require employers to
3 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
4 workday that the employee is not provided with the required rest period(s).

5 61. Compensation for missed rest periods constitutes wages within the meaning of Labor
6 Code section 200.

7 62. Labor Code section 1198 makes it unlawful to employ a person under conditions that
8 violate the Wage Order.

9 63. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
11 with net rest period of at least ten uninterrupted minutes for each four hour work period, or major
12 fraction thereof, as required by the applicable Wage Order.

13 64. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
14 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
15 Defendants' policy of not scheduling each rest period as part of each work shift, including second
16 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
17 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**
18 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**
19 **Sub-Class** members to continue working through their rest breaks due to the excessive workload and
20 maintaining and monitoring their cellular phones during breaks.

21 65. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
22 members additional premium wages when required rest periods were not provided.

23 66. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
24 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
25 costs of suit.

26 67. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
27 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest**
28 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

3 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

4 **(Plaintiff and Hourly Employee Class)**

5 68. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 69. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
8 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
9 applicable Wage Order.

10 70. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
11 which an employee is subject to the control of the employer, and includes all the time the employee
12 is suffered or permitted to work, whether or not required to do so.”

13 71. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
14 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
15 that an employer has actual or constructive knowledge that employees are working.

16 72. Labor Code section 1194 invalidates any agreement between an employer and an
17 employee to work for less than the minimum or overtime wage required under the applicable Wage
18 Order.

19 73. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
20 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
21 to the underlying unpaid minimum wages and interest thereon.

22 74. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
23 than the minimum wage required under the applicable Wage Order for all hours worked during a
24 payroll period.

25 75. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
26 person acting either individually or as an officer, agent or employee of another person, to pay an
27 employee, or cause an employee to be paid, less than the applicable minimum wage.

28 76. Labor Code section 1198 makes it unlawful for employers to employ employees under

1 conditions that violate the applicable Wage Order.

2 77. Labor Code section 204 requires employers to pay non-exempt employees their earned
3 wages for the normal work period at least twice during each calendar month on days the employer
4 designates in advance and to pay non-exempt employees their earned wages for labor performed in
5 excess of the normal work period by no later than the next regular payday.

6 78. Labor Code section 223 makes it unlawful for employers to pay their employees lower
7 wages than required by contract or statute while purporting to pay them legal wages.

8 79. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
9 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
10 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
11 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
12 consecutive day of one workweek.

13 80. Labor Code section 510 and Section 3 of the applicable Wage Order also require
14 employers to pay non-exempt employees overtime wages of no less than two times their respective
15 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
16 worked in excess of eight hours on a seventh consecutive workday during the workweek.

17 81. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
18 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
19 working conditions and compensation arrangements.

20 82. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
21 **Employee Class** members for all time worked, including but not limited to, overtime hours at
22 statutory and/or agreed rates.

23 83. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
24 overtime for all hours worked, at the proper rates of pay. Defendants had a common policy and
25 practice of requiring Plaintiff and **Hourly Employee Class** members to work off-the-clock for which
26 no wages were paid. Specifically, Defendants implemented an unlawful time-rounding policy and
27 practice which rounded down and reduced the actual working hours recorded by Plaintiff and **Hourly**
28 **Employee Class** members, and upon which their pay was based, and generally did so to the detriment

1 of the Plaintiff and **Hourly Employee Class** members, and these unlawfully rounded time entries
2 were inputted into Defendants' payroll system from which wage statements and payroll checks were
3 created. Defendants did so with the ostensible intent of paying Plaintiff and **Hourly Employee Class**
4 members only for the hours they were scheduled to work, rather than the hours they were actually
5 under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the
6 detriment of the Plaintiff and Class members by systematically undercompensating them.

7 84. Next, Defendants had a common policy and practice of automatically deducting time
8 for alleged unpaid meal periods which were systemically denied in violation of California law;
9 Plaintiff and **Hourly Employee Class** members' unpaid meal periods were often shorter than the
10 unpaid time recorded for meal periods, or were systemically interrupted with work.

11 85. Finally, Plaintiff and **Hourly Employee Class** members were required to remain on-
12 call outside of their usual scheduled shifts, and remain readily available to work, immediately upon
13 Defendants' requests. Plaintiff and **Hourly Employee Class** members were not left free and
14 unrestricted during on-call working hours, and were not free to pursue personal interests without
15 restriction.

16 86. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
17 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
18 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
19 they were systemically denied.

20 87. Moreover, Defendants failed to pay Plaintiff and **Hourly Employee Class** members
21 at the applicable and proper regular rates of pay for overtime, and double-time, hours worked.
22 Specifically, Plaintiff and **Hourly Employee Class** members received performance-based, non-
23 discretionary, bonuses in addition to their hourly pay. However, Defendants failed to adjust Plaintiffs'
24 and **Hourly Employee Class** members' regular rates of pay by failing to incorporate the value of the
25 bonus when calculating the overtime pay.

26 88. Defendants further failed to incorporate all bonuses earned and other remunerations
27 into Plaintiffs' and **Hourly Employee Class** members' regular rates of pay when calculating meal
28 and rest period premiums.

89. Defendants failed to properly calculate Plaintiffs' and the **Hourly Employee Class** members' regular rate of pay because Defendants failed to include all forms of compensation in the regular rate including bonuses, and other compensation.

90. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class** members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including overtime wages.

91. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on behalf of himself and **Hourly Employee Class** members, seek to recover unpaid straight time and overtime wages, interest thereon and costs of suit.

92. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

93. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

94. Labor Code section 226(a) states:

"An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at

1 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
2 temporary services employer as defined in Section 201.3, the rate of pay and the total
3 hours worked for each temporary services assignment. The deductions made from
4 payment of wages shall be recorded in ink or other indelible form, properly dated,
5 showing the month, day, and year, and a copy of the statement and the record of the
6 deductions shall be kept on file by the employer for at least three years at the place of
7 employment or at a central location within the State of California. For purposes of
8 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
9 employee or a computer-generated record that accurately shows all of the information
10 required by this subdivision."

11 95. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the
12 "detachable part of the check" provision and the "accurate itemized statement in writing" provision
13 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
14 retains the right to elect to receive a written paper stub or record and that those who are provided with
15 electronic wage statements retain the ability to easily access the information and convert the electronic
16 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

17 96. Plaintiff is informed and believes that, at all relevant times during the applicable
18 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
19 wage statements as described above. Additionally, the wage statements issued to class members
20 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
21 above.

22 97. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
23 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
24 Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only
25 provided in electronic format in violation of Labor Code § 226.

26 98. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
27 **Statement Class** members with accurate written wage statements were intentional in that Defendants
28 have the ability to provide them with accurate wage statements but have intentionally provided them
with written wage statements that Defendants have known do not comply with Labor Code section
226(a).

99. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
Defendants have violated their legal rights to receive accurate wage statements and have misled them

1 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
2 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
3 discovery and mathematical computations to determine the amount of wages owed, has caused
4 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
5 submission of inaccurate information about wages and deductions to federal and state government
6 agencies.

7 100. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
8 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
9 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
10 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
11 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

14 **(Lab. Code §§ 201-203)**

15 **(Plaintiff and Waiting Time Penalties Sub-Class)**

16 101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
17 herein.

18 102. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
19 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
20 earned and unpaid before termination or resignation.

21 103. At all relevant times, pursuant to Labor Code section 201, employees who have been
22 discharged have been entitled to payment of all final wages immediately upon termination.

23 104. At all relevant times, pursuant to Labor Code section 202, employees who have
24 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
25 payment of all final wages at the time of resignation.

26 105. Plaintiff is informed and believes that, at all relevant time during the applicable
27 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
28 members all of their final wages in accordance with the Labor Code.

106. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

107. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

108. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

109. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Reimbursement Class)

110. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

111. Labor Code section 2802(a) states:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

112. Plaintiff and **Expense Reimbursement Class** members were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff and **Expense Reimbursement Class** members were required to purchase a cellular phone and cellular

1 phone service, purchase their own work tools, and incur gas and mileage expenses, all necessary for
2 Plaintiff and **Expense Reimbursement Class** members to execute their duties under Defendants’
3 employ, and for which no reimbursements were paid.

4 113. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
5 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
6 Complaint and until the date of entry of judgment.

7 114. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
8 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys’ fees
9 pursuant to Code of Civil Procedure section 1021.5.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

13 **(Plaintiff and UCL Class)**

14 115. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 116. Business and Professions Code section 17200 defines “unfair competition” to include
17 any unlawful business practice.

18 117. Business and Professions Code section 17203-17204 allow a person who has lost
19 money or property as a result of unfair competition to bring a class action in accordance with Code
20 of Civil Procedure section 382 to recover money or property that may have been acquired from
21 similarly situated persons by means of unfair competition.

22 118. California law requires employers to pay hourly, non-exempt employees for all hours
23 they are permitted or suffered to work, including hours that the employer knows or reasonable should
24 know that employees have worked.

25 119. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
26 SECOND, THIRD, and SIXTH causes of action herein.

27 120. Plaintiff lost money or property as a result of the aforementioned unfair competition.

28 121. Defendants have or may have acquired money by means of unfair competition.

1 122. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
2 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
3 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802
4 as well as applicable Wag Orders, which make it a misdemeanor to commit the violations alleged
5 herein.

6 123. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
8 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;
9 proper sick time pay; reporting time pay; and reimbursement for necessary business expenditures.

10 124. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
11 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
12 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
13 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
14 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
15 similarly situated persons in a class action proceeding.

16 125. As a result of Defendants' violations of the Labor Code during the applicable
17 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
18 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

19 126. Plaintiff is informed and believes that other similarly situated persons have been
20 subject to the same unlawful policies or practices of Defendants.

21 127. Due to the unfair and unlawful business practices in violation of the Labor Code,
22 Defendants have gained a competitive advantage over other comparable companies doing business in
23 the State of California that comply with their legal obligations.

24 128. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
25 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
26 or is considered unlawful under any other state or federal law.

27 129. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
28 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining

1 Defendants, and each of them, and their agents and employees, from further violations of the Labor
2 Code and applicable Wage Orders.

3 130. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
4 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
5 Defendants, and each of them, and their agents and employees, from further violations of the Labor
6 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
7 order permanently enjoining Defendants, and each of them, and their respective agents and
8 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
9 Wage Orders.

10 131. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
11 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
12 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
13 and unfair business practices.

14 132. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
15 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
16 reasonable attorneys' fees in connection with their unfair competition claims.

17 133. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
18 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
19 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
20 and unfair business practices.

21 134. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
22 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
23 reasonable attorneys' fees in connection with their unfair competition claims.

24 **PRAYER FOR RELIEF**

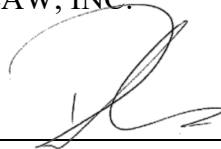
25 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
26 public, prays for relief and judgment against Defendants as follows:

- 27 a. An order that the action be certified as a class action;
28 b. An order that Plaintiff be appointed class representative;

- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;
- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;
- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Costs of suit;
- m. Reasonable attorneys' fees; and
- n. Such other relief as the Court deems just and proper.

Dated: September 1, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Attorneys for Plaintiff
PAUL NATHAN WYNN, and the putative class

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: September 1, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Attorneys for Plaintiff
PAUL NATHAN WYNN, and the putative class