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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ISAAC DELGADO, on behalf of himself and
all others similarly situated, the State of
California, and the general public,

Plaintiff,

v.

OLDCASTLE INFRASTRUCTURE, INC., a
Washington corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 2:24-cv-02031-DJC-CKD

Amended Per Joint Stipulation of the Parties
and the Court's February 10, 2025, Order

**FOURTH AMENDED CLASS AND
REPRESENTATIVE 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 Pay Proper Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Indemnify (Lab. Code § 2802);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs ISAAC DELGADO and MARCOS GUTIERREZ (collectively, “Plaintiffs”), on
2 behalf of themselves, all others similarly situated, the State of California, and the general public,
3 complain and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class and representative action against Defendants OLDCASTLE
6 INFRASTRUCTURE, INC., a Washington 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, Plaintiffs allege that Defendants have:

- 9 a. failed to pay them 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. failure to pay proper vacation wages;
- 17 h. failed to provide them with accurate written wage statements;
- 18 i. failed to reimburse them with necessary business expenditures;
- 19 j. failed to pay them all their final wages following separation of employment.

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

23 **JURISDICTION AND VENUE**

24 2. This matter was removed by Defendants to this Court from the San Joaquin County
25 Superior Court. Plaintiffs reserve the right to challenge federal jurisdiction in this matter.

26 **PARTIES**

27 3. Plaintiff ISAAC DELGADO is, and at all relevant times mentioned herein, an
28 individual residing in the State of California.

1 4. Plaintiff MARCOS GUTIERREZ is, and at all relevant times mentioned herein, an
2 individual residing in the State of California.

3 5. Plaintiffs are informed and believe, and thereupon allege that Defendant
4 OLDCASTLE INFRASTRUCTURE, INC. is, and at all relevant times mentioned herein, a
5 Washington corporation doing business in the State of California.

6 6. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein
7 as DOES 1 through 50, inclusive, and therefore sue these defendants by such fictitious names.
8 Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE defendants
9 when ascertained. Plaintiffs are informed and believe, and thereupon alleges that each of the
10 fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions
11 alleged herein and that Plaintiffs' alleged damages were proximately caused by these defendants, and
12 each of them. Plaintiffs will amend this complaint to allege both the true names and capacities of the
13 DOE defendants when ascertained.

14 7. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times
15 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
16 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
17 or all of the other defendants, and in doing the things alleged herein, were acting within the course
18 and scope of such relationship and with the full knowledge, consent, and ratification by such other
19 defendants.

20 8. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times
21 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
22 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
23 and omissions alleged herein.

24 9. This action has been brought and may be maintained as a class action pursuant to
25 F.R.C.P. Rule 23 because there is a well-defined community of interest among the persons who
26 comprise the readily ascertainable classes defined below and because Plaintiffs are unaware of any
27 difficulties likely to be encountered in managing this case as a class action.

28 10. **Relevant Time Period:** The relevant time period is defined as the time period

beginning four years prior to the filing of this action until judgment is entered.

- a. **Hourly Employee Class**: All persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in hourly or 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”).
- b. **Meal Period Sub-Class**: All **Hourly Employee Class** members who worked in 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.
- c. **Rest Period Sub-Class**: All **Hourly Employee Class** members who worked a 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.
- d. **Waiting Time Penalties Sub-Class**: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.
- e. **Vacation Pay Class**: All persons employed by Defendants in California who earned paid vacation time and/or paid time off without receiving compensation for all vested paid vacation time during the **Relevant Time Period**.
- f. **Wage Statement Class**: All persons employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.
- g. **Expense Reimbursement Class**: All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.
- h. **UCL Class**: All **Hourly Employee Class** and **Expense Reimbursement Class** 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 action.

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

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

13. **Commonality and Predominance**: Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members.

1 These common questions include, but are not limited to:

- 2 a. Whether Defendants maintained a policy or practice of failing to provide
- 3 employees with their rest periods;
- 4 b. Whether Defendants maintained a policy or practice of failing to provide
- 5 employees with their meal periods;
- 6 c. Whether Defendants failed to pay premium wages to class members when they
- 7 have not been provided with meal and rest periods at the appropriate rates of pay;
- 8 d. Whether Defendants failed to pay minimum and/or overtime wages to class
- 9 members for all time worked;
- 10 e. Whether Defendants failed to pay proper vacation wages;
- 11 f. Whether Defendants failed to provide class members with accurate written wage
- 12 statements as a result of providing them with written wage statements with
- 13 inaccurate entries for, among other things, amounts of gross and net wages, and
- 14 total hours worked;
- 15 g. Whether Defendants applied policies or practices that result in late and/or
- 16 incomplete final wage payments;
- 17 h. Whether Defendants failed to reimburse class members for all necessary business
- 18 expenses incurred during the discharge of their duties;
- 19 i. Whether Defendants are liable to class members for waiting time penalties under
- 20 Labor Code section 203; and
- 21 j. Whether class members are entitled to restitution of money or property that
- 22 Defendants may have acquired from them through unfair competition;

23 14. **Typicality:** Plaintiffs' claims are typical of the other class members' claims.
24 Plaintiffs are informed and believe, and thereupon allege that Defendants have a policy or practice of
25 failing to comply with the California Labor Code and Business and Professions Code as alleged in
26 this Complaint.

27 15. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives and
28 have no interests that are adverse to, or otherwise conflict with, the interests of absent class members

1 and are dedicated to vigorously prosecuting this action on their behalf. Plaintiffs will fairly and
2 adequately represent and protect the interests of the other class members.

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

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

17 **GENERAL ALLEGATIONS**

18 18. Plaintiffs worked for Defendants as non-exempt employees during the relevant and
19 statutory periods.

20 19. Defendants had a common policy and practice of systemically failing to pay Plaintiffs
21 and Class members proper wages and overtime for all hours worked, at the proper rates of pay.

22 20. Defendants had a common policy and practice of systemically failing to pay Plaintiffs
23 and Class Members proper wages and overtime for all hours worked, at the proper rates of pay. First,
24 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
25 reduced the actual working hours recorded by Plaintiffs and Class Members, and upon which their
26 pay was based, and generally did so to the detriment of the Plaintiffs and Class Members, and these
27 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
28 statements and payroll checks were created. Defendants did so with the ostensible intent of paying

1 Plaintiffs and Class members only for the hours they were scheduled to work, rather than the hours
2 they were actually under Defendants' control. Plaintiffs contend this policy is not neutral and results,
3 over time, to the detriment of the Plaintiffs and Class members by systematically undercompensating
4 them.

5 21. Next, Plaintiffs and Class Members were consistently required to perform work, off-
6 the-clock, for which they were not paid wages. Specifically, Plaintiffs and Class Members had to wait
7 in line, both before the beginning of their shifts and after their completion, in order for time clocks to
8 become available to them to clock in and out of work. Specifically, Plaintiffs and Class Members
9 were systemically required to boot up their computers, located at their workstations, and then log into
10 Defendant's timekeeping system (Kronos/UDG) in order to clock in for the day. Similarly, after
11 clocking out, Plaintiffs and Class Members had to turn off (and boot down) their computers before
12 they could leave work. Additionally, Plaintiffs and Class Members were required to don and doff
13 their personal protective equipment prior to clocking in for their shifts.

14 22. Also, Plaintiffs and Class Members were required to perform work during unpaid meal
15 periods. Defendant required Plaintiffs and Class Members to remain on call and available to respond
16 to phone calls using their personal cell phones during their unpaid meal periods as well as before the
17 beginning of their shifts and after the end of the workday. Additionally, Plaintiffs and Class members
18 were required to use their personal cellular phones off-the-clock to communicate with management
19 and supervisors regarding work-related matters. The forgoing and uncompensated working time was
20 under the direction and control of Defendants, for which no wages were paid.

21 23. This uncompensated time caused Plaintiffs and Class Members to work in excess of
22 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiffs
23 and Class Members to minimum and overtime wages, which they were systemically denied.

24 24. Defendants had a common policy and practice of systemically denying Plaintiffs and
25 Class Members the opportunity to take meal periods in compliance with the California Law.
26 Defendants had a common policy and practice of requiring Plaintiffs and Class Members to perform
27 work-related activities during unpaid meal periods. Specifically, Plaintiffs and Class Members were
28 regularly denied meal periods, or those meal periods were cut short because Defendants required

1 Class Members to work through the meal periods, including responding to calls from customers and
2 the need to take care of customer orders. Additionally, Plaintiffs and Class Members had to process
3 will call items, which were being delivered to Defendants' facilities during their meal periods. When
4 such deliveries were made, Plaintiffs and Class Members had to interrupt their meal breaks, locate
5 forklift operators, and ensure that the products were properly received and sent to the shipping and
6 receiving facilities. Additionally, due to understaffing, heavy workloads and the uncompensated work
7 discussed above, Defendants failed to provide Plaintiffs and Class Members with the opportunity to
8 take their meal periods prior to the completion of their fifth hour of work. Additionally, Plaintiffs'
9 and Class Members' meal periods were interrupted on a regular basis by management and supervisors,
10 who did not authorize restarting the meal periods after such interruptions, thus cutting them short.
11 Defendants failed to provide Class Members with a second meal period when they worked over ten
12 hours per day.

13 25. Plaintiffs and Class Members were not provided with meal periods of at least thirty
14 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each
15 meal period as part of each work shift; (2) no formal written meal policy that encouraged employees
16 to take their meal periods, or that advised Class Members of their meal and rest period rights; and (3)
17 Defendants' practice of requiring putative class members to continue working through their meal and
18 rest periods due to the excessive workload.

19 26. Defendants had a common policy and practice of systemically denying Plaintiffs and
20 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiffs
21 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
22 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
23 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
24 no formal compliant written rest period policy that encouraged employees to take their rest periods,
25 or that properly advised Plaintiffs and Class Members of their rest period rights; (3) Defendants'
26 policy and practice of requiring putative class members to continue working through their rest breaks
27 due to the excessive workload. Additionally, Plaintiffs and Class Members had to process will call
28 items, which were being delivered to Defendant's facilities during their rest periods. When such

1 deliveries were made, Plaintiffs and Class Members had to interrupt their rest breaks, locate forklift
2 operators, and ensure that the products were properly received and sent to the shipping and receiving
3 facilities.

4 27. Furthermore, Defendants failed to pay Plaintiffs and Class Members premium pay
5 wages at their appropriate regular rates of pay for each meal and rest period denied.

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

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

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

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

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

23 33. Furthermore, Defendants failed to provide Plaintiffs and Class Members with paper
24 pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
25 Plaintiffs’ and Class Members’ wage statement were only provided in electronic format in violation
26 of Labor Code § 226.

27 34. Plaintiffs and Class Members were not reimbursed for business expenses incurred in
28 executing their duties under Defendant’s employ. Specifically, Defendants failed to reimburse

1 Plaintiffs and Class Members for necessary business expenses while requiring Plaintiffs and Class
2 Members to work remotely from home during the COVID-19 pandemic. Plaintiffs and Class
3 Members used their personal cellular phones to communicate with their supervisors, management,
4 and co-workers regarding work assignments and issues, particularly when their radios and company-
5 issued phones did not properly work. Additionally, Plaintiffs and Class Members incurred expenses
6 for home internet use, work technology, and utilities for Plaintiffs' and Class Members' home
7 workspaces, including gas, water, electricity, and rent. Additionally, Defendants required Plaintiffs
8 and Class Members to use their cellular phones to communicate with colleagues and supervisors
9 regarding work-related activities.

10 35. Additionally, Defendants also had a common policy and practice of systemically
11 failing to pay Plaintiffs and Class Members the requisite and accrued vacation time pay in accordance
12 with California Law. Specifically, Class Members were not paid the accrued vacation upon
13 termination. Since "use-it-or-lose-it" vacation policies are prohibited under the California law,
14 Defendant was required to compensate employees for any accrued vacation time at their regular
15 hourly rate. Plaintiffs and Class Members accrued vested vacation time and/or paid time off.
16 However, Defendants failed to pay all accrued vacation time and/or paid time off owed to Plaintiffs
17 and Class Members upon their separation from employment.

18 36. Additionally, Labor Code § 1198 requires that “. . . the standard conditions of labor
19 fixed by the commission shall be the . . . standard conditions of labor for employees. The employment
20 of any employee . . . under conditions of labor prohibited by the order is unlawful.” Paragraph 15 of
21 the applicable IWC Wage Orders requires the following regarding the temperatures maintained at
22 employers' facilities within California: “(A) The temperature maintained in each work area shall
23 provide reasonable comfort consistent with industry-wide standards for the nature of the process and
24 the work performed...” Defendants also violated the Labor Code and Wage Orders by, upon
25 information and belief, failing to maintain reasonable temperatures throughout Defendants' facilities
26 and instead compelling employees to work in excessively hot work areas.

27 ///

28 ///

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiffs and Meal Period Sub-Class)

37. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if fully alleged herein.

38. At all relevant times, Plaintiffs 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.

39. 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.

40. 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.

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

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

43. Section 11 of the applicable Wage Order states:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered 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

1 agreement between the parties an on-the-job paid meal period is agreed
2 to. The written agreement shall state that the employee may, in writing,
revoke the agreement at any time.

3 44. At all relevant times, Plaintiffs were not subject to a valid on-duty meal period
4 agreement. Plaintiffs are informed and believe that, at all relevant times, **Meal Period Sub-Class**
5 members were not subject to valid on-duty meal period agreements with Defendants.

6 45. Plaintiffs allege that, at all relevant times during the applicable limitations period,
7 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
8 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each
9 five (5) hour work period, as required by Labor Code section 512 and the applicable Wage Order.
10 Defendants had a common policy and practice of requiring Plaintiffs and **Meal Period Sub-Class**
11 members to perform work-related activities during unpaid meal periods. Specifically, Plaintiffs and
12 **Meal Period Sub-Class** members were regularly denied meal periods, or those meal periods were
13 cut short because Defendants required **Meal Period Sub-Class** members to work through the meal
14 periods, including responding to calls from customers and the need to take care of customer orders.
15 Additionally, Plaintiffs and **Meal Period Sub-Class** members had to process will call items, which
16 were being delivered to Defendants' facilities during their meal periods. When such deliveries were
17 made, Plaintiffs and **Meal Period Sub-Class** members had to interrupt their meal breaks, locate
18 forklift operators, and ensure that the products were properly received and sent to the shipping and
19 receiving facilities. Additionally, due to understaffing, heavy workloads and the uncompensated work
20 discussed above, Defendants failed to provide Plaintiffs and **Meal Period Sub-Class** members with
21 the opportunity to take their meal periods prior to the completion of their fifth hour of work.
22 Additionally, Plaintiffs and **Meal Period Sub-Class** members' meal periods were interrupted on a
23 regular basis by management and supervisors, who did not authorize restarting the meal periods after
24 such interruptions, thus cutting them short. Defendants failed to provide **Meal Period Sub-Class**
25 members with a second meal period when they worked over ten hours per day.

26 46. Plaintiffs and **Meal Period Sub-Class** members were not provided with meal periods
27 of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
28 scheduling each meal period as part of each work shift; (2) no formal written meal policy that

1 encouraged employees to take their meal periods, or that advised **Meal Period Sub-Class** members
2 of their meal and rest period rights; and (3) Defendants' practice of requiring **Meal Period Sub-Class**
3 members to continue working through their meal and rest periods due to the excessive workload.

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

7 48. Plaintiffs allege that, at all relevant times during the applicable limitations period,
8 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
9 **Period Sub-Class** with a second meal period when they worked shifts of ten (10) or more hours and
10 failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

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

13 50. At all relevant times, Defendants failed to pay Plaintiffs and the **Meal Period Sub-**
14 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
15 regular rates of pay when required meal periods were not provided.

16 51. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiffs, on behalf of
17 themselves and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages,
18 interest thereon, and costs of suit.

19 52. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
20 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
21 the **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS**

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

25 **(Plaintiffs and Rest Period Sub-Class)**

26 53. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 54. At all relevant times, Plaintiffs and the **Rest Period Sub-Class** members have been

1 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
2 Code and the applicable Wage Order.

3 55. Section 12 of the applicable Wage Order imposes an affirmative obligation on
4 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
5 (10) minutes of net rest time for each four (4) hour work period, or major fraction thereof, that must
6 be in the middle of each work period insofar as practicable.

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

11 57. Compensation for missed rest periods constitutes wages within the meaning of Labor
12 Code section 200.

13 58. Labor Code section 1198 makes it unlawful to employ a person under conditions that
14 violate the Wage Order.

15 59. Plaintiffs allege that, at all relevant times during the applicable limitations period,
16 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
17 with net rest period of at least ten (10) uninterrupted minutes for each four (4) hour work period, or
18 major fraction thereof, as required by the applicable Wage Order.

19 60. Plaintiffs and **Rest Period Sub-Class** members were not provided with rest periods of
20 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
21 Defendants' policy of not scheduling each rest period as part of each work shift, including second
22 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
23 encouraged employees to take their rest periods, or that properly advised Plaintiffs and **Rest Period**
24 **Sub-Class** members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest**
25 **Period Sub-Class** members to continue working through their rest breaks due to the excessive
26 workload.

27 61. Additionally, Plaintiffs and **Rest Period Sub-Class** members had to process will call
28 items, which were being delivered to Defendant's facilities during their rest periods. When such

1 deliveries were made, Plaintiffs and **Rest Period Sub-Class** members had to interrupt their rest
2 breaks, locate forklift operators, and ensure that the products were properly received and sent to the
3 shipping and receiving facilities.

4 62. At all relevant times, Defendants failed to pay Plaintiffs and the **Rest Period Sub-**
5 **Class** members additional premium wages when required rest periods were not provided.

6 63. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of
7 themselves and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest
8 thereon, and costs of suit.

9 64. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
10 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
11 **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

12 **THIRD CAUSE OF ACTION**

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

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

15 **(Plaintiffs and Hourly Employee Class)**

16 65. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
17 herein.

18 66. At all relevant times, Plaintiffs and **Hourly Employee Class** members are or have
19 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
20 applicable Wage Order.

21 67. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
22 which an employee is subject to the control of the employer, and includes all the time the employee
23 is suffered or permitted to work, whether or not required to do so."

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

27 69. Labor Code section 1194 invalidates any agreement between an employer and an
28 employee to work for less than the minimum or overtime wage required under the applicable Wage

1 Order.

2 70. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
3 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
4 to the underlying unpaid minimum wages and interest thereon.

5 71. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
6 than the minimum wage required under the applicable Wage Order for all hours worked during a
7 payroll period.

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

11 73. Labor Code section 1198 makes it unlawful for employers to employ employees under
12 conditions that violate the applicable Wage Order.

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

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

19 76. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
20 to pay non-exempt employees overtime wages of no less than one and one-half (1.5) times their
21 respective regular rates of pay for all hours worked in excess of eight (8) hours in one workday, all
22 hours worked in excess of forty (40) hours in one workweek, and/or for the first eight (8) hours
23 worked on the seventh consecutive day of one workweek.

24 77. Labor Code section 510 and Section 3 of the applicable Wage Order also require
25 employers to pay non-exempt employees overtime wages of no less than two (2) times their respective
26 regular rates of pay for all hours worked in excess of twelve (12) hours in one workday and for all
27 hours worked in excess of eight (8) hours on a seventh consecutive workday during the workweek.

28 78. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied

1 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
2 working conditions and compensation arrangements.

3 79. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and **Hourly**
4 **Employee Class** members for all time worked, including but not limited to, overtime hours at
5 statutory and/or agreed rates.

6 80. Plaintiffs and **Hourly Employee Class** members were not paid proper wages and
7 overtime for all hours worked, at the proper rates of pay.

8 81. Defendants had a common policy and practice of systemically failing to pay Plaintiffs
9 and **Hourly Employee Class** members proper wages and overtime for all hours worked, at the proper
10 rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which
11 rounded down and reduced the actual working hours recorded by Plaintiffs and **Hourly Employee**
12 **Class** members, and upon which their pay was based, and generally did so to the detriment of the
13 Plaintiffs and **Hourly Employee Class** members, and these unlawfully rounded time entries were
14 inputted into Defendants' payroll system from which wage statements and payroll checks were
15 created. Defendants did so with the ostensible intent of paying Plaintiffs and **Hourly Employee Class**
16 members only for the hours they were scheduled to work, rather than the hours they were actually
17 under Defendants' control. Plaintiffs contend this policy is not neutral and results, over time, to the
18 detriment of the Plaintiffs and **Hourly Employee Class** members by systematically
19 undercompensating them.

20 82. Plaintiffs and **Hourly Employee Class** members were consistently required to
21 perform work, off-the-clock for which they were not paid wages. Specifically, Plaintiffs and **Hourly**
22 **Employee Class** members had to wait in line, both before the beginning of their shifts and after their
23 completion, in order for time clocks to become available to them to clock in and out of work.
24 Specifically, Plaintiffs and **Hourly Employee Class** members were systemically required to boot up
25 their computers, located at their workstations, and then log into Defendants' timekeeping system
26 (Kronos/UDG) in order to clock in for the day. Similarly, after clocking out, Plaintiffs and **Hourly**
27 **Employee Class** members had to turn off (and boot down) their computers before they could leave
28 work. Additionally, Plaintiffs and **Hourly Employee Class** members were required to don on and

1 don off their personal protective equipment prior to clocking in for their shifts.

2 83. Also, Plaintiffs and Class Members were required to perform work during unpaid meal
3 periods. Despite their articulated policies, Defendants also required Plaintiffs and **Hourly Employee**
4 **Class** members to remain on call and available to respond to phone calls using their personal cell
5 phones during their unpaid meal and rest periods as well as before the beginning of their shifts and
6 after the end of the workday. Additionally, Plaintiffs and Class members were required to use their
7 personal cellular phones off-the-clock to communicate with management and supervisors regarding
8 work-related matters. The forgoing and uncompensated working time was under the direction and
9 control of Defendants, for which no wages were paid.

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

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

18 86. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiffs, on
19 behalf of themselves and **Hourly Employee Class** members, seek to recover unpaid straight time and
20 overtime wages, interest thereon and costs of suit.

21 87. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
22 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
23 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PAY VACATION WAGES**

26 **(Lab. Code § 227.3)**

27 **(Plaintiffs and Vacation Pay Class)**

28 88. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

89. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

90. At all relevant times during the applicable limitations period, Plaintiffs and members of the **Vacation Pay Class** accrued vacation time, and/or paid time off, during their employment with Defendants.

91. However, Defendants implemented a common policy and practice of failing to pay Plaintiffs and **Vacation Pay Class** members for all accrued vacation wages upon separation of employment, in violation of Labor Code 227.3. Specifically, **Vacation Pay Class** members were not paid the accrued vacation upon termination. Since "use-it-or-lose-it" vacation policies are prohibited under the California law, Defendants were required to compensate employees for any accrued vacation time at their regular hourly rate.

92. By reason of the above, Plaintiffs and the members of the **Vacation Pay Class** are entitled to restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of the original Complaint until the date of entry of judgment.

93. Plaintiffs, on behalf of themselves and the members of the **Vacation Pay Class**, seek interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiffs and Wage Statement Penalties Sub-Class)

94. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged

1 herein.

2 95. Labor Code section 226(a) states:

3 An employer, semimonthly or at the time of each payment of wages,
4 shall furnish to his or her employee, either as a detachable part of the
5 check, draft, or voucher paying the employee's wages, or separately if
6 wages are paid by personal check or cash, an accurate itemized
7 statement in writing showing (1) gross wages earned, (2) total hours
8 worked by the employee, except as provided in subdivision (j), (3) the
9 number of piece-rate units earned and any applicable piece rate if the
10 employee is paid on a piece-rate basis, (4) all deductions, provided that
11 all deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the
14 name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a
16 social security number, (8) the name and address of the legal entity that
17 is the employer and, if the employer is a farm labor contractor, as
18 defined in subdivision (b) of Section 1682, the name and address of the
19 legal entity that secured the services of the employer, and (9) all
20 applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the
22 employee and, beginning July 1, 2013, if the employer is a temporary
23 services employer as defined in Section 201.3, the rate of pay and the
24 total hours worked for each temporary services assignment. The
25 deductions made from payment of wages shall be recorded in ink or
26 other indelible form, properly dated, showing the month, day, and year,
27 and a copy of the statement and the record of the deductions shall be
28 kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For
purposes of this subdivision, 'copy' includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

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

97. Plaintiffs are informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide Plaintiffs and **Wage Statement Class**
members with written wage statements as described above. Additionally, the wage statements
issued to class members failed to account for the unpaid minimum wages, overtime, and premium
///

1 pay wages described above.

2 98. Furthermore, Defendants failed to provide Plaintiffs and **Wage Statement Class**
3 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
4 Opinion Letters. Plaintiffs' and **Wage Statement Class** members' wage statements were only
5 provided in electronic format in violation of Labor Code § 226.

6 99. Plaintiffs are informed and believes that Defendants' failure to provide Plaintiffs and
7 **Wage Statement Class** members with accurate written wage statements was intentional in that
8 Defendants have the ability to provide them with accurate wage statements but have intentionally
9 provided them with written wage statements that Defendants have known do not comply with Labor
10 Code section 226(a).

11 100. Plaintiffs and **Wage Statement Class** members have suffered injuries, in that
12 Defendants have violated their legal rights to receive accurate wage statements and have misled them
13 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
14 statements has prevented immediate challenges to Defendants' unlawful pay practices, has required
15 discovery and mathematical computations to determine the amount of wages owed, has caused
16 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
17 submission of inaccurate information about wages and deductions to federal and state government
18 agencies.

19 101. Pursuant to Labor Code section 226(e), Plaintiffs, on behalf of themselves and **Wage**
20 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in
21 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
22 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
23 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

24 **SIXTH CAUSE OF ACTION**

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

26 **(Lab. Code §§ 201-203)**

27 **(Plaintiffs and Waiting Time Penalties Sub-Class)**

28 102. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged

1 herein.

2 103. At all relevant times, Plaintiffs and **Waiting Time Penalties Sub-Class** members have
3 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
4 earned and unpaid before termination or resignation.

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

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

10 106. Plaintiffs are informed and believes that, at all relevant times during the applicable
11 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
12 members all their final wages in accordance with the Labor Code.

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

17 108. Plaintiffs are informed and believes, and thereupon alleges that Defendants' failure to
18 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members has been willful
19 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
20 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
21 requirements.

22 109. Pursuant to Labor Code sections 203 and 218.6, Plaintiffs, on behalf of themselves
23 and **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the dates that
24 their final wages have first become due until paid, up to a maximum of thirty days, and interest
25 thereon.

26 110. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
27 and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Waiting Time Penalties**
28 **Sub-Class** members, seeks awards of reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiffs and Reimbursement Class)

111. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

112. 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.

113. Plaintiffs and **Expense Reimbursement Class** members were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Defendants failed to reimburse Plaintiffs and **Expense Reimbursement Class** members for necessary business expenses while requiring Plaintiffs and **Expense Reimbursement Class** members to work remotely from home during the COVID-19 pandemic. Plaintiffs and **Expense Reimbursement Class** members used their personal cellular phones to communicate with their supervisors, management, and co-workers regarding work assignments and issues, particularly when their radios and company-issued phones did not properly work. Additionally, Plaintiffs and **Expense Reimbursement Class** members incurred expenses for home internet use, work technology, and utilities for Plaintiffs' and **Expense Reimbursement Class** members' home workspaces, including gas, water, electricity, and rent. Additionally, Defendants required Plaintiffs and **Expense Reimbursement Class** members to use their cellular phones to communicate with colleagues and supervisors regarding work-related activities.

114. Accordingly, Plaintiffs and **Expense Reimbursement Class** members are entitled to restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of the Complaint and until the date of entry of judgment.

115. Plaintiffs, on behalf of themselves, and **Expense Reimbursement Class** members, seeks interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees

1 and costs pursuant to Code of Civil Procedure section 1021.5.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

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

5 **(Plaintiffs and UCL Class)**

6 116. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
7 herein.

8 117. Business and Professions Code section 17200 defines “unfair competition” to include
9 any unlawful business practice.

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

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

17 120. Plaintiffs and the **UCL Class** members re-allege and incorporate the FIRST,
18 SECOND, THIRD, FOURTH, and SEVENTH causes of action herein.

19 121. Plaintiffs lost money or property as a result of the aforementioned unfair competition.

20 122. Defendants have or may have acquired money by means of unfair competition.

21 123. Plaintiffs are informed and believes, and thereupon alleges that by committing the
22 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
23 216, 225, 226.6, 226.7, 227.3, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1,
24 1198, 1199, and 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit
25 the violations alleged herein.

26 124. Defendants have committed criminal conduct through their policies and practices of,
27 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
28 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;

1 and reimbursement for necessary business expenditures.

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

8 126. As a result of Defendants' violations of the Labor Code during the applicable
9 limitations period, Plaintiffs have suffered an injury-in-fact and has lost money or property in the
10 form of earned wages. Specifically, Plaintiffs have lost money or property as a result of Defendants'
11 conduct.

12 127. Plaintiffs are informed and believes that other similarly situated persons have been
13 subject to the same unlawful policies or practices of Defendants.

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

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

20 130. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
21 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
22 Defendants, and each of them, and their agents and employees, from further violations of the Labor
23 Code and applicable Wage Orders.

24 131. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
25 request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants,
26 and each of them, and their agents and employees, from further violations of the Labor Code and
27 applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks an order
28 permanently enjoining Defendants, and each of them, and their respective agents and employees,

1 from further violations of the Labor Code and applicable Industrial Welfare Commission Wage
2 Orders.

3 132. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
4 themselves and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
5 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
6 and unfair business practices.

7 133. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
8 and/or the common fund doctrine, Plaintiffs and **UCL Class** members are entitled to recover
9 reasonable attorneys' fees in connection with their unfair competition claims.

10 134. Pursuant to Business and Professions Code section 17203, Plaintiffs, on behalf of
11 themselves and **UCL Class** members, seeks 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.

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

17 **NINTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698, *et seq.*)**

20 136. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

21 137. During the applicable limitations period, Defendants have violated Labor Code §§
22 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
23 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

24 138. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
25

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

1 and other current and former employees, to bring a representative civil action to recover civil penalties
 2 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
 3 maintained as a class action pursuant to Code of Civil Procedure section 382.

4 139. Plaintiffs, a former employee against whom Defendants committed one or more of the
 5 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
 6 within the meaning of Labor Code § 2699(c). Plaintiffs were employed by Defendants as a non-
 7 exempt hourly employee in California. Aggrieved Employees include all non-exempt hourly
 8 employees of Defendants within the state of California from one year prior to the date of this letter
 9 and continuing through the present (Plaintiffs and Aggrieved Employees are collectively referred to
 10 herein as “Aggrieved Employees”)

11 140. Plaintiffs have complied with the procedures for bringing suit specified in Labor Code
 12 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
 13 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiffs with any notice of an
 14 intent to investigate.

15 141. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs seek the following civil
 16 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 227.3,
 17 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 18 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 227.3, 1174, 1194, 1198
 19 and 2802, one hundred dollars (\$100) for each employee per pay period for
 20 each initial violation and two hundred dollars (\$200) for each employee per
 21 pay period for each subsequent violation (penalties set by Labor Code §
 22 2699(f)(2));
- 23 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
 24 (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 25 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
 26 employee for each initial violation that was neither willful nor intentional, two
 27 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
 28 withheld from each employee, for each initial violation that was either willful

1 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
2 five percent (25%) of the amount unlawfully withheld from each employee,
3 for each subsequent violation, regardless of whether the subsequent violation
4 was either willful or intentional (penalties set by Labor Code § 210);

5 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
6 employee for each initial violation that was neither willful nor intentional, two
7 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
8 the amount unlawfully withheld from each employee, for each initial violation
9 that was either willful or intentional, and two hundred dollars (\$200) for each
10 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
11 from each employee, for each subsequent violation, regardless of whether the
12 subsequent violation was either willful or intentional (penalties set by Labor
13 Code § 225.5);

14 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
15 citation, two hundred and fifty dollars (\$250) for each employee for each
16 violation. Alternatively, if an initial citation or its equivalent occurred before
17 the filing of this action, one thousand dollars (\$1,000) for each employee for
18 each violation (penalties set by Labor Code § 226.3);

19 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
20 employee for each initial pay period for which the employee was underpaid,
21 and one hundred dollars (\$100) for each employee for each subsequent pay
22 period for which the employee was underpaid (penalties set by Labor Code §
23 558);

24 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
25 aggrieved employee for each initial violation of Labor Code § 1197 that was
26 intentional and two hundred and fifty dollars (\$250) for each aggrieved
27 employee per pay period for each subsequent violation of Labor Code § 1197,
28 regardless of whether the initial violation was intentional (penalties set by

Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiffs seek an award of reasonable attorneys' fees and costs in connection with Plaintiffs' claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiffs be appointed class representative;
- c. An order that counsel for Plaintiffs 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. Civil penalties;
- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

Dated: February 20, 2025

D.LAW, INC.

/s/ David Keledjian

Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiffs
ISAAC DELGADO, MARCOS GUTIERREZ
and the putative class

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, all other similarly situated, the State of California, and the general public, hereby demands a jury trial on all issues so triable.

Dated: February 20, 2025

D.LAW, INC.

/s/ David Keledjian

Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiffs
ISAAC DELGADO, MARCOS GUTIERREZ
and the putative class