

D.LAW, INC.
 Emil Davtyan (SBN 299363)
emil@d.law
 David Yeremian (SBN 226337)
d.yeremian@d.law
 Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
 Tania Fonseca (SBN 309927)
t.fonseca@d.law
 880 E Broadway
 Glendale, CA 91205
 Telephone: (818) 962-6465
 Facsimile: (818) 962-6469

FILED
 Superior Court of California
 County of Los Angeles

12/22/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Miro Deputy

Attorneys for Plaintiff JOSE LUIS RUBALCAVA GAMEZ,
 on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

JOSE LUIS RUBALCAVA GAMEZ, an
 individual, on behalf of himself and others
 similarly situated,

Plaintiff,

vs.

COMPREHENSIVE DISTRIBUTION
 SERVICES, INC., a California
 corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No.: 23STCV26479

CLASS ACTION

Assigned for All Purposes To:

Hon. Carolyn B. Kuhl

Dept.: 12

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Failure to Pay Reporting Time Under 8 CCR § 11050(5);
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
12. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
13. Failure to Maintain Reasonable Work Area Temperatures under the Wage Orders; and
14. Violation of Business & Professions Code § 17200 *et seq.*; and
15. Penalties under PAGA, Labor Code § 2698. *et seq.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Original Complaint filed: October 27, 2023

1 Plaintiff JOSE LUIS RUBALCAVA GAMEZ (hereinafter “Plaintiff”), on behalf of himself and
2 all other similarly situated non-exempt, hourly employees employed by Defendants in California
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants as follows:

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants
9 COMPREHENSIVE DISTRIBUTION SERVICES, INC., a California corporation and DOES 1
10 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
11 that Defendants violated various provisions of the California Labor Code, relevant orders of the
12 Industrial Welfare Commission (IWC), and California Business & Professions Code, and seeks
13 redress for these violations.

14 2. Plaintiff worked as a lumper at Defendants’ facilities and locations in California.
15 Defendants employed other similarly situated Class members as lumpers, receivers, order
16 selectors, forklift operators, freight runners, driver assistants, warehouse clerks and in similar and
17 related positions in connection to freight handling services they provided to Defendants’
18 customers throughout California. Plaintiff and the other similarly situated Class members worked
19 at Defendants’ behest without being paid all wages due and without being provided all required
20 breaks. More specifically, Plaintiff and the other similarly situated Class members were employed
21 by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same
22 policies and practices (3) and endured similar violations at the hands of Defendants as the other
23 Employees who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and failed to record accurate time worked by these Employees, failed to pay them at the
26 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
27 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
28 prevented them from learning of these unlawful pay practices. Defendants also failed to provide

1 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
2 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
3 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant COMPREHENSIVE DISTRIBUTION SERVICES, INC. is a California
6 corporation which lists its principal address with the California Secretary of State in Gardena,
7 California. It lists its type of business as "FREIGH HANDLING SERVICES." Defendant
8 COMPREHENSIVE DISTRIBUTION SERVICES, INC. is listed as the employer on the wage
9 statements issued to Plaintiff by Defendants, and upon information and belief to other Class
10 members, with the same Gardena address. Upon information and belief, COMPREHENSIVE
11 DISTRIBUTION SERVICES, INC. operates various facilities, including the Livermore and Tracy
12 California facilities where Plaintiff worked. On information and belief, Defendants maintain
13 operations and locations throughout Los Angeles County and California. COMPREHENSIVE
14 DISTRIBUTION SERVICES, INC.'s website explains that: "We are a logistics service provider
15 with an impeccable reputation in the following industries: Food & Grocery Distribution for
16 Retailers[;] Foodservice Operation & Supply Chain[;] 3PL Logistics Operation[;] Food Processing
17 / Manufacturing Operation[;] Apparel Distribution[;] Wholesale Distribution of General
18 Merchandise[;] Medical Products Distribution[;] Product Manufacturing and Distribution[.]"

19 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
25 County, where Defendants operate and provide freight handling services to California customers.

26 6. The true names and capacities, whether individual, corporate, associate or whatever
27 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
28 Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil

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

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

17 **FACTUAL BACKGROUND**

18 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
19 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
20 Commission ("IWC"). During the period of four years prior to the filing of this action through its
21 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
22 worked or were not paid at the appropriate minimum, regular and overtime rates, including for
23 meal period and rest break premium payments. Plaintiff also contends that Defendants failed to
24 pay Plaintiff and the Class members all wages due and owing, including by miscalculating wages
25 owed and by requiring off the clock work, failed to provide meal and rest breaks, and failed to
26 furnish accurate wage statements and timely pay all wages owed, all in violation of various
27 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

28 9. During the course of Plaintiff and the Class members' employment with

1 Defendants, they were not paid all wages they were owed, including for all work performed
2 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at the
3 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
4 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
5 exempt, hourly employees as freight-handling workers based out of Defendants’ facilities in
6 California.

7 10. Plaintiff was employed by Defendant as a lumper, with duties that included
8 unloading freight from commercial delivery trucks to the warehouse floor and repackaging the
9 freight for distribution. Plaintiff generally worked over 40 hours per week, five to six shifts per
10 week. Plaintiff’s scheduled hours were generally from 4:30 a.m. through 12:30 p.m. or longer.
11 Plaintiff occasionally worked on Saturdays as required.

12 11. Despite their obligation to maintain accurate timekeeping records for hours
13 worked by the Class members, Defendants maintained no time record keeping system whatsoever
14 in their California facilities. In fact, for much of Plaintiff’s employment, Defendants paid
15 employees by their scheduled hours or the desired number of hours rather than their actual hours
16 worked. During this time, meal periods were automatically deducted from Employees’ shifts
17 without any record indicating the Class members actually received them. For approximately three
18 months near the end of Plaintiff’s employment, Defendants implemented a makeshift
19 timekeeping system that relied on supervisors to manually input Employees’ shift start and end
20 time on paper “Time Reports.” These manual entries were for shift end and beginning times as
21 well as the beginning and ending times for meal periods. At all times during Plaintiff’s
22 employment, Defendants failed to accurately record Employees actual time worked, rounded
23 down and shaved total hours worked to the detriment of Employees, and automatically deducted
24 meal periods from Employees shifts.

25 12. During the period of time when Defendants purported to record Employees’ time
26 worked, Employees were not permitted to review their timesheets to ensure accuracy. From the
27 limited timekeeping records provided for Plaintiff, the timesheets evidence Defendants’ unlawful
28 rounding and time shaving, and fabricated meal period entries. Plaintiff’s purported signatures at

1 the bottom of the timesheets, certifying the accuracy of their contents, did not appear to be his. To
2 compound Defendants' fraudulent timekeeping practices, they also consistently failed to provide
3 wage statements to Employees. For some pay periods, Plaintiff was paid in cash with no wage
4 statement provided. On other occasions, he would be provided a check along with a purported
5 wage statement, but the wage statement's data was not reflective of Plaintiff's actual pay rate or
6 hours worked. On information and belief, other Employee Class members were also paid, or
7 stated more appropriately underpaid, in a similar fashion.

8 13. The failure to maintain accurate timekeeping and payroll records perpetrated by
9 Defendants has also been exacerbated by other off the clock work Defendants required their
10 Employees to endure. In order to complete their duties, Employees were compelled to arrive at
11 Defendants' warehouses sufficiently before their scheduled shift start time. Upon arrival,
12 Employees were expected to immediately begin unloading freight from the trucks that had been
13 waiting at the warehouse overnight. Some Employees were provided badges to scan their entry
14 into the building which was otherwise locked. An hour or two after Employees had arrived and
15 begun working, their supervisor Cesar Chavez would arrive. On information and belief,
16 Supervisor Chavez recorded Employees' start time as the time he arrived at the warehouse, and
17 not the actual start time that Employees began working. Employees were also required to
18 complete off the clock work during their purported meal periods. Employees were not permitted
19 to leave the warehouse at any time and were required to remain on standby to unload freight from
20 arriving trucks. Thus, Employees had to rush through their meals and resume working if a truck
21 arrived. Plaintiff and the class members were also required to work or otherwise remain under
22 Defendants' control after their shift end times, including on site and through after-hours work-
23 related communications and other work requirements. Specifically, Plaintiff was required by his
24 supervisor to remain after the scheduled shift end time to pick up and organize pallets. Employees
25 were also routinely called after workhours with work instructions for the next day.

26 14. Defendants also failed to pay reporting time pay to Plaintiff and Class members. It
27 was common practice for Defendants to require Employees to arrive at the warehouse for a shift
28 but after two hours of working, send them home because supervisors claimed there was not

1 enough work. In these instances, Defendants failed to pay Employees for half of their usual or
2 scheduled day's work or four hours at the correct rate of pay.

3 15. Defendants did this, upon information and belief, in connection with other
4 Employees in a concerted effort to limit and restrict regular and overtime incurred by Plaintiff
5 and the other Class members. Time worked off the clock also caused Plaintiff and other Class
6 members to work beyond eight hours. As a result of the above-described rounding and other off
7 the clock work, Defendants failed to pay Plaintiff and Class members overtime for several
8 minutes to hours at the end of work shifts which Defendants did not record in timekeeping.

9 16. Moreover, Defendants agreed to pay Plaintiff and the similarly situated Class
10 members at a higher shift rate than what they were actually paid and agreed to pay higher wage
11 differentials based on the work performed. Defendants had agreed to pay Plaintiff \$18 per hour,
12 but the few wage statements provided to Plaintiff show he was paid at a rate of \$16 per hour, \$2
13 less than what was promised to him. On information and belief, if and when Defendants paid
14 overtime premium wages, they did so at a rate of 1.5 times the pay rate of \$16 or less, without
15 including the promised rate and wage differentials used to calculate and pay overtime. Upon
16 information and belief, to the extent Defendants paid any wage differentials or other forms of
17 remuneration for hours worked in a pay period, Defendants also failed to include them in the
18 regular rate of pay used to calculate and pay overtime wages.

19 17. Plaintiff was therefore not paid for all his hours worked at the required minimum,
20 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
21 work off the clock and without pay. With work shifts generally scheduled for eight hours or
22 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
23 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
24 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
25 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
26 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
27 information and belief, the Class members were bound by similar scheduling and work policies
28 which Defendants required them to follow and endured similar violations at Defendants' hands as

1 Plaintiff.

2 18. Defendants have either failed to maintain timekeeping records for Plaintiff that
3 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
4 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
5 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,
6 Defendants have committed knowing and intentional ongoing violations of the record keeping
7 requirements under the Labor Code §§ 226 and 1174.

8 19. As a result of the above-described unlawful requirements to work off the clock,
9 the failure to accurately record all hours worked and unlawful rounding, and the other wage
10 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
11 paid all wages earned and all wages owed to them by Defendants, including when working more
12 than eight hours in any given day and/or more than forty hours in any given week. As a result of
13 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
14 worked for which they were not adequately and completely compensated, in addition to the hours
15 they were required to work off the clock at their regular rates.

16 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
17 and the Class members is and has been a direct consequence of Defendants' unlawful
18 compensation policies and practices, which upon information and belief applied uniformly to the
19 Class members working at Defendants' locations and facilities. As a result of the above-described
20 unlawful requirements to work off the clock and regular rate miscalculation, the failure to
21 accurately record all hours worked and pay wages at the correct rates, and the other wage
22 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
23 paid all wages earned and all wages owed to them by Defendants, including when working more
24 than eight hours in any given day and/or more than forty hours in any given week.

25 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
26 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
27 hours worked and failing to pay minimum wages for all time worked, as required by California
28 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,

1 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
2 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
3 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
4 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants
5 paid Plaintiff and the Class members bonuses and shift differentials and other forms of
6 remuneration above and beyond their hourly pay, upon information and belief Defendants
7 miscalculated and therefore underpaid any overtime they paid during these pay periods by failing
8 to include all forms of remuneration in the regular rate used to calculate and pay overtime.

9 22. Defendants also failed to provide Plaintiff and the Class members with their
10 required meal periods, cool down periods, and the at least two ten-minute rest breaks required for
11 scheduled shifts of eight hours. Demanding workloads contributed to Defendants' common
12 policy of failing to provide lawful meal periods to Plaintiff and the Class members, as required
13 under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly
14 systematically failed to authorize and permit Plaintiff and the employee Class Members to take
15 all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
16 IWC Wage Order(s).

17 23. More specifically, Plaintiff worked shifts that entitled him to at least one meal
18 period, but Defendants' supervisor required Plaintiff and the Class members to prioritize
19 unloading freight over taking proper meal periods. In fact, Defendants made no effort to even
20 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
21 net thirty minute meal periods. Employees were required to remain at the warehouse at all times
22 and remain on standby in case a truck arrived and they needed to unload the freight. During the
23 majority of Plaintiff's employment, Defendants failed to record any meal periods and
24 automatically deducted at least thirty minutes from Employees' time worked, regardless of
25 whether Employees actually received their meal periods in full. When Defendants began recording
26 Employees' time, they wanted to maintain the appearance of compliant meal periods and would
27 have supervisor log a thirty-minute meal period for all Employees regardless of whether
28 Employees actually received their meal periods in full. To the extent Defendants required Plaintiff

1 to work over ten hours on a work shift, Defendants also failed to provide second meal periods and
2 Defendants have produced no evidence of payments for meal period violations under Labor Code
3 226.7. To the extent Defendants have paid any such premiums, upon information and belief they
4 failed to include all forms of remuneration, including wage differentials, in the regular rate at
5 which Defendants paid the premium. Plaintiff has no recollection of agreeing to waive any of his
6 meal periods.

7 24. Defendants thus failed to provide all the legally required unpaid, off-duty meal
8 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
9 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
10 members were required to perform work as ordered by Defendants for more than five hours during
11 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
12 followed a practice of requiring off the clock work and rounding and time shaving in a manner
13 that would impact when Employees were to receive meal periods and rest breaks, and required
14 them to respond to work calls and inquiries and other demands during breaks, thus leading to
15 further violations.

16 25. Upon information and belief, Defendants' systems did not automatically generate a
17 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
18 into a work shift or in the event the time punch records reflected a meal period of less than thirty
19 minutes. However, upon information and belief, in the event Defendants did pay any meal period
20 premiums, they did so at the employee's customary regular rate of hourly compensation without
21 including all forms of remuneration in that hourly rate calculation, for example by omitting wage
22 differentials and the like from the rate at which meal premiums were paid.

23 26. As a result, Defendants' failure to provide Plaintiff and the Class members with all
24 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
25 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
26 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
27 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
28 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'

1 policies and practices. On the occasions when Plaintiff and the Class members were provided with
2 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
3 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
4 occurred in one or more of the following manners:

- 5 (a) Class members were not provided full thirty-minute duty free meal periods
6 for work days in excess of five hours and were not compensated one hour's
7 wages in lieu thereof, all in violation of, among others, Labor Code §§
8 226.7, 512, and the applicable Industrial Welfare Commission Wage
9 Order(s);
- 10 (b) Class members were not provided second full thirty-minute duty free meal
11 periods for work days in excess of ten hours;
- 12 (c) Class members were required to work through at least part of their daily
13 meal period(s);
- 14 (d) Meal periods were provided after five hours of continuous work during a
15 shift; and
- 16 (e) Class members were restricted in their ability to take a full thirty-minute
17 meal period and were not permitted to leave their work premises during
18 meal periods and were otherwise required to remain under Defendants'
19 control during meal periods.

20 27. Similar violations resulted from Defendants' failure to authorize and permit
21 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
22 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
23 were either not authorized permitted the opportunity to take a rest break, or were required to
24 remain under Defendants' control and respond to instructions from management and job and
25 customer demands if and when they even attempted to take one. Upon information and belief,
26 Defendants also failed to authorize and permit employees to leave the premises during rest
27 breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
28 to remain under their control during required off-duty rest break times.

1 28. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
2 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
3 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
4 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
5 during the relevant period, meaning Defendants' rest break policy was not to schedule or
6 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
7 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
8 on shifts over ten hours. Given the work demands, understaffing, and pressure from Defendants'
9 management, Plaintiff and the Class members were compelled to not take rest breaks despite
10 working extended shifts. Defendants have produced no evidence of any payments for rest break
11 violations under Labor Code § 226.7. To the extent Defendants have paid any such premiums,
12 upon information and belief they failed to include all forms of remuneration, including bonuses
13 and shift differentials, in the regular rate at which Defendants paid the premium.

14 29. Defendants also failed to provide Employees with any recovery or "cooldown"
15 periods to prevent heat illness in violation of Labor Code § 226.7. On information and belief,
16 Defendants failed to maintain reasonable temperatures throughout Defendants' work sites and did
17 not provide Employees with any cooldown periods as respite from the high warehouse
18 temperatures.

19 30. Defendants' uniformly applied policies and practices thus resulted in untimely and
20 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
21 members worked shifts of at least eight hours, which required at least two rest breaks, and often
22 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
23 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
24 permitted to take a second or a third break, and those that were provided were often late and
25 generally interrupted by job duties and requirements. Employees were not permitted to take any
26 cooldown periods.

27 31. During rest and cooldown periods, employers must relieve employees of all duties
28 and relinquish control over how employees spend their time. Plaintiff and the Class members

1 were and are under Defendants' control when they are working through rest breaks and remaining
2 under Defendants' control. Defendants have also provided either impermissibly shortened or
3 untimely meal and rest breaks to Plaintiff and the Class members. Plaintiff and the Employees in
4 the Class were thus not authorized and permitted to take lawful rest periods, were systematically
5 required by Defendants to work through or during breaks, and were not provided with one hour's
6 wages in lieu thereof. They were required to remain on-duty during breaks or portions of their
7 breaks, thus making them either untimely or shortened and on-duty, and they were also prevented
8 from leaving the premises and otherwise remain under Defendants' control during rest breaks
9 under Defendants' uniformly applied policies and practices. Rest and cooldown period violations
10 therefore arose in one or more of the following manners:

- 11 (a) Class members were required to work without being provided a minimum
12 ten minute rest period for every four hours or major fraction thereof worked
13 and were not compensated one hour of pay at their regular rate of
14 compensation for each workday that a rest period was not provided, and to
15 the extent Defendants paid any premiums, they failed to include all forms of
16 remuneration in the regular rate used to calculate and pay them.
- 17 (b) Class members were not authorized and permitted to take timely rest periods
18 for every four hours worked, or major fraction thereof;
- 19 (c) Class members were not authorized and permitted to take any cooldown
20 periods to prevent heat illness; and
- 21 (d) Class members were required to remain on duty and under Defendants'
22 control during rest periods or otherwise had their rest periods interrupted by
23 work demands.

24 32. From at least four years prior to the filing of this lawsuit and continuing to the
25 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
26 deducting the Employees' earned wages, including by requiring off the clock work during breaks
27 and before and after work shifts and by miscalculating the regular rate and accordingly
28 underpaying overtime wages and meal and rest break premiums. By not compensating Employees

1 for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and
2 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

3 33. Defendants also violated California Labor Code § 246 by not providing all
4 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
5 provides that an Employee who “works in California for the same employer for 30 or more days
6 within a year from the commencement of employment is entitled to paid sick days as specified in
7 this section.” Paid sick time for nonexempt employees shall be calculated in the same manner as
8 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
9 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
10 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
11 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
12 leave to the Class members during the relevant time period, including by failing to provide two
13 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
14 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
15 enforced through Labor Code § 248.5, which requires that: “If paid sick days were unlawfully
16 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or
17 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
18 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.”
19 Plaintiff accordingly seek this relief available for Defendants’ failure to provide Employees with
20 all their required and earned sick days and all their COVID-19 supplemental sick leave in
21 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
22 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
23 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

24 34. Upon information and belief, Defendants also failed to provide Employees such as
25 Plaintiff at the time of his employment and thereafter with written notice complying with all the
26 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
27 shall provide to each employee a written notice, in the language the employer normally uses to
28 communicate employment-related information to the employee, containing” specific required

1 information. Upon information and belief, Defendants failed to provide this information to the
2 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
3 provide Plaintiff and the aggrieved employee Class members certain specific information upon
4 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
5 any such information when he was hired, or have failed to produce it, and upon information and
6 belief Defendants committed similar violations in connection with similarly situated and
7 aggrieved Class members.

8 35. As a result of these illegal policies and practices, Defendants also engaged in and
9 enforced the following additional unlawful practices and policies against Plaintiff and the Class
10 members he seeks to represent:

- 11 (e) failing to pay all wages owed to Class members who either were discharged,
12 laid off, or resigned in accordance with the requirements of Labor Code §§
13 201, 202, 203;
- 14 (f) failing to pay all wages owed to the Class members twice monthly in
15 accordance with the requirements of Labor Code § 204;
- 16 (g) failing to pay Class members all wages owed, including all meal and rest
17 period premium wages, and failing to pay them at the regular rate of
18 compensation;
- 19 (h) failing to maintain accurate records of Class members' hours worked and
20 earned wages and meal periods in violation of Labor Code §§ 226 and
21 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 22 (i) failing to produce timekeeping records in response to Plaintiff's timely and
23 lawful request to receive them under these authorities.

24 36. Defendants have also failed to provide Class members with wage statements, as
25 required by California wage-and-hour laws. As noted above, Defendants did not consistently
26 provide wage statements to Employees. Some pay periods, Plaintiff was paid in cash with no wage
27 statement provided. On other occasions, he would be provided a check along with a wage
28 statement, but the wage statement's data was not reflective of Plaintiff's actual pay rate or hours

1 worked. On information and belief, other Employee Class members were also paid in similar
2 fashion and defendants thus systematically violated Labor § Code 204.

3 37. Moreover, Defendants have also consistently failed to provide Class members with
4 timely, accurate, and itemized wage statements, in writing, as required by California wage-and-
5 hour laws, including by the above-described requirement of off the clock work, failure to pay all
6 overtime and double time wages owed and failure to pay them at the appropriate premium rates,
7 and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or
8 by miscalculating any overtime or meal period or rest break premium wages and by the systematic
9 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
10 difficult to account with precision for the unlawfully withheld wages and meal and rest period
11 compensation owed to Plaintiff and the Class, during the liability period, including because they
12 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
13 and because they did not implement and preserve a record-keeping method as required for non-
14 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
15 California Wage Orders. Upon information and belief, time clock punches were not maintained or
16 were not accurately maintained for work shifts and meal periods. Defendants also failed to
17 accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff
18 and the Class members, including by failing to pay all overtime hours at the correctly calculated
19 overtime premium rate.

20 38. Defendants also provided Plaintiff and the Class members with wage statements
21 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
22 For the same reasons as explained above, Plaintiff and the Class members were provided with
23 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
24 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants
25 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
26 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
27 were aware that Plaintiff and the Class members worked more total hours than were reflected on
28 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.

1 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
2 the actual hours they worked in total during a pay period and the rates they were paid for those
3 hours worked.

4 39. Defendants have thus also failed to comply with Labor Code § 226(a) by
5 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
6 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
7 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
8 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
9 applicable California IWC Wage Orders by failing to maintain time records showing when the
10 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
11 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
12 payment of wages and accurately reporting total hours worked.

13 40. Defendants also required Plaintiff and the Class members to work hours off the
14 clock for which they were not compensated. They were required to endure off the clock work
15 addressed above, including during interrupted or otherwise on-duty meal and rest periods and were
16 not provided with sick pay and supplemental sick leave and were subjected to systematic off the
17 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted
18 on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
19 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
20 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
21 two hours of their resignation, as required by California law, including Labor Code § 203.

22 41. Additionally, Labor Code § 1198 requires that “. . . the standard conditions of
23 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
24 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”
25 Paragraph 15 of the applicable IWC Wage Orders requires the following regarding the
26 temperatures maintained at employers’ facilities within California: “(A) The temperature
27 maintained in each work area shall provide reasonable comfort consistent with industry-wide
28 standards for the nature of the process and the work performed...” Defendants also violated the

1 Labor Code and Wage Orders by, upon information and belief, failing to maintain reasonable
2 temperatures throughout Defendants' warehouses and not providing break areas that were
3 sufficiently cooled. Defendants instead required employees to work in excessively hot work areas
4 and unload freight without having respite from the work site temperatures or having a break area
5 where employees could cool down.

6 42. Plaintiff has also requested records from Defendants and they have failed to
7 constructively respond or to fully respond. Therefore, Plaintiff also asserts that Defendants
8 followed a consistent policy of denying Plaintiff and Class members the right to inspect and
9 receive all of their payroll records, timecards, and personnel records.

10 43. Additionally, from at least four years prior to the filing of this lawsuit and
11 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
12 incur necessary business expenses in the course of performing their required job duties without
13 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
14 calls from management, protective equipment such as boots, jacket, safety belt, gloves, and
15 goggles, and work supplies such as blades for box cutters. Plaintiff and the Class members must
16 be reimbursed for these necessary business expenses under Labor Code § 2802, and Defendants
17 systematically failed to do so.

18 44. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
19 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
20 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
21 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title 8,
22 section 11000 *et seq.*

23 45. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
24 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
25 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
26 fraudulent practices alleged in this Complaint.

27 **CLASS ALLEGATIONS**

28 46. Plaintiff brings this class action on behalf of himself and all others similarly

1 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
2 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
3 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
4 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
5 hourly employees within the State of California.” This includes lumpers, receivers, order selectors,
6 forklift operators, freight runners, driver assistants, warehouse clerks and those in similar and
7 related positions in connection to freight handling services provided at Defendants facilities and to
8 Defendants’ customers throughout California. Further, Plaintiff seeks to represent the Subclasses
9 composed of and defined as follows:

10 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
11 compensated for all hours worked for Defendants at the applicable minimum wage.

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

15 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
16 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
17 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

18 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
19 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
20 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
21 thereof, or any cooldown periods, and failing to pay one hour of pay at the Employee’s regular
22 rate of pay in lieu thereof.

23 e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not
24 compensated reporting time pay.

25 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
26 applicable limitations period, were not provided with accurate itemized wage statements.

27 g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members
28 who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay,

1 including by requiring off the clock work.

2 h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
3 members who were subject to Defendants' policy and practice of not timely paying all wages
4 earned when they were due and payable at least twice monthly.

5 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
6 applicable limitations period, either voluntarily or involuntarily separated from their employment
7 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
8 termination.

9 j. Subclass 10. Failure To Produce Requested Employment Records Subclass. All
10 Class members who, within the applicable limitations period, were denied the right to inspect and
11 receive all their payroll records, timecards, and personnel records.

12 k. Subclass 11. Payroll Records Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
14 by California wage-and-hour laws.

15 l. Subclass 12. Failure to Maintain Reasonable Temperature Subclass: All Class
16 members who, within the applicable limitations period, were required by Defendants to work in
17 areas with temperatures that were not maintained to provide reasonable comfort consistent with
18 applicable standards.

19 m. Subclass 13. Expense Reimbursement Subclass. All Class members who incurred
20 necessary and reasonable expenses in connection with performing their job duties for Defendants
21 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

22 n. Subclass 14. UCL Subclass. All Class members who are owed restitution as a
23 result of Defendants' business acts and practices, to the extent such acts and practices are found to
24 be unlawful, deceptive, and/or unfair.

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

1 48. Defendants, as a matter of company policy, practice and procedure, and in violation
2 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
3 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
4 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
5 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
6 benefit of this work, required Employees to perform this work and permitted or suffered to permit
7 this work. Defendants have uniformly denied these Class members wages to which these
8 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
9 order to unfairly cheat the competition and unlawfully profit.

10 49. This action has been brought and may properly be maintained as a class action
11 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
12 of interest in this litigation and the proposed Class is easily ascertainable from the employment
13 records for Plaintiff and the Class members that Defendants are required to maintain under
14 California law.

15 **A. Numerosity**

16 50. The potential members of the Class as defined are so numerous that joinder of all
17 the Class members is impracticable. While the precise number of Class member has not been
18 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
19 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
20 Class definition within the State of California. Plaintiff alleges that Defendants’ employment
21 records will provide information as to the number and location of all Class members.

22 **B. Commonality**

23 51. There are questions of law and fact common to the Class that predominate over any
24 questions affecting only individual Class members. The common questions are numerous and
25 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
26 Labor Code addressed above. As such, these common questions predominate over individual
27 questions concerning each individual Class Member’s showing as to his or her eligibility for
28 recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants paid reporting time pay under the applicable wage order and 8 CCR § 11050(5);
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks, cooldown periods, or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary

business expenses incurred by Employees;

o. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;

p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

r. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

52. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations they were required to endure are typical of those of the other Class members.

D. Adequacy of Representation

53. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

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

55. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class

1 members. Further, as the economic or other loss suffered by vast numbers of Class members may
2 be relatively small, the expense and burden of individual actions makes it difficult for the Class
3 members to individually redress the wrongs they have suffered. Moreover, in the event
4 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
5 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
6 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
7 to vindicate their rights for violations they endured which they would otherwise be foreclosed
8 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

9 56. Class action treatment will allow those persons similarly situated to litigate their
10 claims in the manner that is most efficient and economical for the parties and the judicial system.
11 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
12 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
13 set forth the subject and nature of the instant action. The Defendants' own business records can be
14 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
15 that any further notice is required additional media and/or mailings can be used.

16 57. Defendants, as prospective and actual employers of the Employees in the Class,
17 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
18 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
19 Employees as well as the effect of any alleged arbitration agreements that may have been forced
20 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
21 and policies, most notably intentionally refusing to pay for all hours actually worked which should
22 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
23 agreements and policies and practices on the Employees and Class as a whole.

24 58. Plaintiff and the Employees in the Class did not discover the fact that they were
25 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
26 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
27 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
28 well as obtain injunctive relief preventing such practices from continuing. As a result, the

1 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
2 discovered their claims.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY MINIMUM WAGES**
5 **(Against All Defendants)**

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

8 60. Defendants failed to pay Employees minimum wages for all hours worked.
9 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
10 would work hours and not receive wages, including as alleged above in connection with off the
11 clock work, including all the time required to remain on duty and under Defendants' control
12 during breaks and due to the work demands placed upon them by Defendants' management and
13 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
14 policies required systematic off the clock work and underpayment of all wages owed to
15 Employees over a period of time, while benefiting Defendants. During the relevant time period,
16 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
17 including by requiring systematic off the clock work. To the extent any local wage ordinances
18 were also applicable to paying the employees an hourly rate above the minimum wage rate,
19 Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of
20 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
21 whole, as a result of implementing a uniform policy and practice that denied accurate
22 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

23 61. In California, employees must be paid at least the applicable state minimum wage
24 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
25 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
26 California Labor Code § 204, other applicable laws and regulations, and public policy, an
27 employer must timely pay its employees for all hours worked. Defendants failed to do so.

28 62. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"

1 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
2 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
3 applicable minimum wage rate fixed by the commission for work during the relevant period is
4 found in the Wage Orders.

5 63. The minimum wage provisions of California Labor Code are enforceable by private
6 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
7 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to recover in a civil action the
9 unpaid balance of the full amount of this minimum wage or overtime compensation, including
10 interest thereon, reasonable attorney’s fees and costs of suit.”

11 64. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
15 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
16 the absence of a contractually agreed upon one.

17 65. In committing these violations of the California Labor Code, Defendants
18 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
19 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
20 time worked by Plaintiff and other members of the Class, including by requiring off the clock
21 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
22 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
23 Welfare Commission requirements and other applicable laws and regulations. As a result of these
24 violations, Defendants also failed to timely pay all wages earned in accordance with California
25 Labor Code § 1194.

26 66. California Labor Code § 1194.2 also provides for the following remedies: “In any
27 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
28

1 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

3 67. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
4 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
5 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
6 pay each employee minimum wages.

7 68. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
8 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
9 interest thereon.

10 69. Defendants have the ability to pay minimum wages for all time worked and have
11 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
12 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

13 70. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
14 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
15 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
16 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
17 members of the Class further request recovery of all unpaid wages, according to proof, interest,
18 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
19 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
20 wage compensation is determined to be owed to the Class members who have terminated their
21 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
22 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
23 which penalties are sought herein on behalf of these Class members. Defendants’ failure to timely
24 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
25 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as
26 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
27 members are entitled to seek and recover statutory costs.

28 ///

1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 73. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
15 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
16 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
17 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
18 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
19 work in a workweek.

20 74. Defendants had a consistent policy of not paying Employees wages for all hours
21 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
22 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
23 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
24 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
25 clock work, as detailed above.

26 75. Defendants thus had a consistent policy of not paying Employees wages for all
27 hours worked, including hours at their required regular, overtime, and double-time rates.
28 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted

1 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
2 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
3 Class members all earned and owed straight time and overtime wages and other benefits, in
4 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
5 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
6 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
7 employees to work through meal periods or remain under Defendants' control when they were
8 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
9 respond to demands from customers and managers.

10 76. Therefore, Employees were not properly compensated, nor were they paid overtime
11 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
12 Based on information and belief, Defendants did not make available to Employees a reasonable
13 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
14 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
15 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
16 Class members to work through meal periods when they were required to be clocked out or to
17 otherwise work off the clock to complete their daily job duties.

18 77. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
19 regular wages owed and overtime compensation for all hours worked, as required by California
20 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
21 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
22 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

23 78. Additionally, Labor Code § 558(a) provides "any employer or other person acting
24 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
26 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid in addition to an amount sufficient to recover
28 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid in addition to an
2 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
3 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
4 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
5 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
6 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
7 Code § 558.

8 79. Defendants’ failure to pay compensation in a timely fashion also constituted a
9 violation of California Labor Code § 204, which requires that all wages shall be paid
10 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
11 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
12 and overtime compensation earned by Employees. Each such failure to make a timely payment of
13 compensation to Employees constitutes a separate violation of California Labor Code § 204.

14 80. Employees have been damaged by these violations of California Labor Code §§
15 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
16 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
17 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
18 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
19 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
20 any order or ruling of the commission.”

21 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
22 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
23 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
24 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
25 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
26 against Defendants, and each of them, and any additional sums as provided by the Labor Code
27 and/or other statutes.

28 ///

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 83. Employees regularly worked shifts greater than five (5) hours and in some
7 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
8 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
9 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
10 for a shift of more than ten (10) hours without providing him or her with a second meal period of
11 not less than thirty (30) minutes.

12 84. Defendants failed to provide Employees with meal periods as required under the
13 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
14 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
15 provided them after Employees worked beyond the fifth hour of their shifts or Employees
16 otherwise had them shortened and interrupted by work demands and requirements to perform off
17 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
18 on the occasions when Employees worked more than ten hours in a given shift, they did so
19 without receiving a second uninterrupted thirty-minute meal period as required by law.

20 85. Defendants thus failed to provide Plaintiff and the Class members with meal
21 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
22 including by not providing them with the opportunity to take meal breaks, by providing them late
23 or for less than thirty minutes, or by requiring them to perform work during breaks.

24 86. Moreover, Defendants failed to compensate Employees for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
26 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
2 period premiums, they upon information and belief underpaid them by miscalculating the regular
3 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
4 compensate the Employees in the Class for each meal period not provided or inadequately
5 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
6 Wage Order.

7 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
8 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
9 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
10 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
11 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
12 other statutes and applicable IWC Wage Order paragraphs.

13 **FOURTH CAUSE OF ACTION**

14 **REST-BREAK AND RECOVERY PERIOD LIABILITY UNDER LABOR CODE § 226.7**

15 **(Against All Defendants)**

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

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

21 90. Labor Code § 226.7 also provides that an employer shall not require an employee
22 to work during a recovery period, defined as a cooldown period afforded to prevent heat illness.

23 91. Employees consistently worked consecutive four hour shifts and were generally
24 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
25 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
26 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
27 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
28 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants also failed to

1 maintain reasonable temperature throughout Defendants' facilities and failed to provide recovery
2 periods so that Employees could cool down. Defendants made no effort to authorize and permit
3 Plaintiff and the Class members to take lawful rest and recovery breaks. Employees were often
4 required to work or to otherwise remain under Defendants' control during rest and recovery
5 periods, including by responding to work requirements, and had breaks provided untimely as a
6 result of the above described off the clock work.

7 92. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
8 Orders provide that if an employer fails to provide an employee rest and recovery period in
9 accordance with this section, the employer shall pay the employee one hour of pay at the
10 employee's regular rate of compensation for each workday that the rest period is not provided.
11 Defendants failed to do so.

12 93. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest and recovery periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7
14 and 512 and paragraph 12 of the applicable IWC Wage Orders.

15 94. Defendants failed to authorize and permit Plaintiff and the Class members to take
16 rest and recovery periods, as required by the Labor Code. Moreover, Defendants did not
17 compensate Employees with an additional hour of pay at each Employee's hourly rate for each
18 day that Defendants failed to provide them with adequate rest breaks, as required under Labor
19 Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent
20 Defendants paid any rest break premiums, they upon information and belief, underpaid them by
21 miscalculating the regular rate of compensation by not including all forms of remuneration in it.
22 Defendants thus failed to compensate the Employees in the Class for each rest period not provided
23 or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the
24 applicable IWC Wage Order.

25 95. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
26 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
27 of wages at their effective hourly rates of pay for each day worked without the required rest
28 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against

Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

FIFTH CAUSE OF ACTION

**FAILURE TO PAY REPORTING TIME PAY UNDER WAGE ORDER 9-2001, 8 CCR §
11090(5)**

(Against All Defendants)

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

97. Wage Order 9-2001 provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit, 8, § 11090(5)(A).

98. As set forth herein, Plaintiff and Employees were required to report for work and were sent home before half of their scheduled days’ work. Defendants failed to pay Plaintiff and Employees for half of their scheduled days’ work in violation of the applicable Wage Order.

99. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all required reporting time pay.

100. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid wages, including reporting time pay, 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.

///

///

///

///

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

102. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; 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.

103. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including for all overtime and double time hours worked and for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

104. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor

1 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
2 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
3 members with such timely and accurate wage and hour statements.

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

20 106. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
21 are required "to pay each employee, on the established payday for the period involved, not less
22 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
23 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
24 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
25 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
26 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
27 IWC Wage Orders.

28 107. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code

1 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
2 Class suffered injuries, including among other things confusion over whether they received all
3 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
4 them to make mathematical computations to analyze whether the wages paid in fact compensated
5 them correctly for all hours worked.

6 108. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
7 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
8 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
9 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
10 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
11 an award of costs and reasonable attorneys' fees.

12 **SEVENTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 221**
14 **(Against All Defendants)**

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

17 110. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
18 receive from an employee any part of wages theretofore paid by said employer to said employee."
19 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
20 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
21 to do so.

22 111. Defendants unlawfully received and/or collected wages from the Employees in the
23 Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of
24 pay at the regular rate of compensation for every meal and rest period violation endured by
25 Plaintiff and the other Class members, as alleged above. By not compensating Employees for all
26 hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned
27 in violation of Labor Code § 221.

28 112. As a direct and proximate cause of the unauthorized deductions, Employees have

1 been damaged, in an amount to be determined at trial.

2 **EIGHTH CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 204**
4 **(Against All Defendants)**

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

7 114. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
8 employment are due and payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
10 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
11 during which the labor was performed, and labor performed between the 16th and the last day,
12 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
13 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
14 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
15 calendar days following the close of the payroll period.” As detailed above, Defendants
16 maintained a consistently applied policy and practice of not paying all wages earned between the
17 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
18 between the 16th and the last day of the month between the 1st and 10th day of the following month.
19 Defendants similarly failed to pay all wages earned by not more than seven calendar days
20 following the close of the payroll period.

21 115. All wages due and owing to Plaintiff and the Class members, including as required
22 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
23 required by Labor Code § 1194 and other sections became due and payable to each employee in
24 each pay period that he or she was not provided with a meal period or rest period or paid straight
25 or overtime wages to which he or she was entitled.

26 116. Defendants violated Labor Code § 204 by systematically refusing to timely pay
27 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
28 applicable IWC Wage Orders, employers are required “to pay each employee, on the established

1 payday for the period involved, not less than the applicable minimum wage for all hours worked in
2 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
3 hours than those fixed by the order or under conditions of labor prohibited by the order is
4 unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for
5 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
6 penalties under paragraph 20 of the applicable IWC Wage Orders.

7 117. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
8 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
9 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
10 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
11 applicable IWC Wage Orders.

12 **NINTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 203**
14 **(Against All Defendants)**

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

17 119. Plaintiff and numerous Class members are no longer employed by Defendants; they
18 either quit Defendants' employ or were fired therefrom.

19 120. Defendants failed to pay these Employees all wages due and certain at the time of
20 termination or within seventy-two hours of resignation.

21 121. The wages withheld from these Employees by Defendants remained due and owing
22 for more than thirty days from the date of separation from employment. Additionally, Defendants
23 failed to pay Plaintiff his final check at the time of his termination.

24 122. Defendants thus failed to pay Plaintiff and the Class members without abatement,
25 all wages as defined by applicable California law. Among other things, these Employees were not
26 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
27 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
28 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and

1 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
2 required time was willful within the meaning of Labor Code § 203.

3 123. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
4 are required "to pay each employee, on the established payday for the period involved, not less
5 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
6 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
8 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
9 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
10 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
11 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
12 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
13 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
14 "violates...any provision of this chapter or any order or ruling of the commission."

15 124. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
16 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
17 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
18 shall continue until paid for up to thirty (30) days from the date they were due.

19 **TENTH CAUSE OF ACTION**

20 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

21 **(Against All Defendants)**

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

24 126. California Labor Code § 1174 requires that all employers shall keep accurate time
25 and wage records for all employees. California Labor Code § 1174.5 further requires that any
26 employee suffering injury due to a willful violation of the aforementioned obligations may seek
27 damages, including civil penalties, from the employer.

28 127. During the course of Plaintiff's and Employees' employment, Defendants

1 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
2 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
3 premium pay as discussed above and failing to document and pay for actual hours worked.

4 128. Defendants are also required by the California Labor Code § 1198 and the
5 applicable Wage Order to maintain a tracking system that accurately records the times during
6 which Employees work.

7 129. Defendants have maintained a common unlawful policy and practice of failing to
8 accurately record all hours worked and all meal period start and end times.

9 130. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
10 knew wages to be due but failed to pay them.

11 131. Accordingly, Defendants are liable for civil penalties pursuant to the California
12 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

13 **ELEVENTH CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

18 133. Pursuant to California Labor Code § 226, current and former employees have the
19 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
20 request to their employer. Under this statute, an employer that receives a request to inspect or
21 receive a copy of records pertaining to a current or former employee must comply with the request
22 as soon as practicable, but no later than twenty-one calendar days from the date of the request.

23 134. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
24 or his or her representative, has the right to inspect and receive a copy of the personnel records
25 that the employer maintains relating to the employee's performance or to any grievance concerning
26 the employee. Under this statute, upon written request from a current or former employee or his or
27 her representative, an employer must make the contents of those personnel records available for
28 inspection or provide a copy of the personnel records to the current or former employee, or his or

1 her representative, not later than thirty calendar days from the date the employer receives the
2 written request, subject to some limited exceptions. Failure to comply with these requests allows
3 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
4 226(f).

5 135. Plaintiff sent written requests through his counsel to Defendants for their payroll
6 records, timecards, and personnel records. However, Plaintiff has not received all of his requested
7 records as of the date of this Complaint.

8 136. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
9 produce the required records requested by Plaintiff.

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

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

15 139. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of
16 seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other
17 Class members similarly situated are similarly entitled.

18 **TWELFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

20 **(Against All Defendants)**

21 140. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 141. Plaintiff is informed and believes and based thereon alleges that throughout the
24 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
25 related expenses they incurred. Defendants required Plaintiff and the Class members to use their
26 cellular phones to conduct work-related business. Plaintiff and the Class members must be
27 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
28 systematically failed to do so.

1 142. Defendants thus followed a uniform policy and practice of failing to reimburse
2 Employees for these necessary work related expenses or losses incurred in direct discharge of their
3 job duties during employment with Defendants and at the direction of the Defendants pursuant to
4 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

5 143. Defendants' knowing and willful failure to reimburse lawful necessary work related
6 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
7 things, Defendants did not inform employees of their right to be reimbursed for those work related
8 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
9 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
10 necessary expenses was an expected and essential function of their employment with Defendants
11 and that failure to incur those expenses would have adverse consequences on their employment.

12 144. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
13 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
14 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
15 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
16 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
17 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

18 **THIRTEENTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN TEMPERATURES UNDER THE WAGE ORDERS**

20 **(Against All Defendants)**

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

23 146. Under Labor Code § 1198, "[t]he employment of any employee for longer hours
24 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
25 Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding
26 the temperatures maintained at employers facilities within California: "(A) The temperature
27 maintained in each work area shall provide reasonable comfort consistent with industry-wide
28 standards for the nature of the process and the work performed. (B) If excessive heat or humidity

1 is created by the work process, the employer shall take all feasible means to reduce such excessive
2 heat or humidity to a degree providing reasonable comfort... (C) A temperature of not less than
3 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.
4 (D) Federal and State energy guidelines shall prevail over any conflicting provision of this
5 section.” (See, e.g., Cal. Code Regs., tit. 8 § 11070(15), Cal. Code Regs., tit. 8, § 11090(15)).

6 147. Further California Labor Code § 6720 required the California Division of
7 Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by
8 January 1 2019. Cal/OSH’s draft standard applies its proposed regulations to all indoor work areas
9 where the temperature equals or exceeds 82° Fahrenheit when employees are present. At times
10 during the relevant time period Plaintiffs and other climbers and workers were subjected to
11 excessive heat and or humidity resulting in temperatures equaling or exceeding 82° F.

12 148. Under Labor Code §1199: “Every employer or other person acting either
13 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
14 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
15 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
16 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
17 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
18 an order of the commission...”

19 149. Defendants violated the Labor Code and Wage Orders by, upon information and
20 belief, failing to maintain reasonable temperatures throughout Defendants’ facilities and instead
21 compelling employees to work and operate machinery and equipment in excessively hot work
22 areas. During the relevant time period, as detailed above, Defendants violated Labor Code §§ 1198
23 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and other
24 Employees with reasonable comfort by maintaining working area temperatures within the range of
25 industry standards by, *inter alia*, providing adequate air conditioning or heat ventilation etc.

26 150. These practices and policies resulted in Defendants’ failure to maintain temperature
27 providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of
28 the applicable IWC Wage Orders. Plaintiff and the Class members may therefore pursue damages

1 and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable
2 IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in
3 an amount to be determined at trial.

4 **FOURTEENTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

6 **(Against All Defendants)**

7 151. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
8 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
9 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
10 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
11 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
12 the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower costs to themselves by failing to
3 comply with minimum labor standards.

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

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

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

16 158. By the conduct alleged herein, Defendants have engaged and continue to engage in
17 a business practice which violates California and federal law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
19 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
20 Court should issue declaratory and other equitable relief pursuant to California Business &
21 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
22 constitute unfair competition, including restitution of wages wrongfully withheld.

23 159. As a proximate result of the above-mentioned acts of Defendants, Employees have
24 been damaged, in a sum to be proven at trial.

25 160. Unless restrained by this Court Defendants will continue to engage in such
26 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
27 should make such orders or judgments, including the appointment of a receiver, as may be
28 necessary to prevent the use by Defendants or their agents or employees of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, including but not limited to
2 the disgorgement of such profits as may be necessary to restore Employees to the money
3 Defendants have unlawfully failed to pay.

4 **FIFTEENTH CAUSE OF ACTION**

5 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

6 **(Against All Defendants)**

7 161. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 162. Plaintiff and the Employees in the Class are also aggrieved employees as defined
10 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
11 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
12 period.

13 163. In failing to pay Aggrieved Employees minimum wages and overtime, not
14 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
15 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
16 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
17 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
18 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
19 paragraph 7 of the applicable IWC Wage Orders.

20 164. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
21 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
22 including the penalty provisions, without limitation, based, inter alia, on the following California
23 Labor Code sections: 201, 202, 203, 204, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558,
24 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and
25 2698 *et seq.*

26 165. More specifically, after complying with the notice procedures of Labor Code §
27 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
28 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed

underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 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, Rest and Recovery 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 and recovery periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

1 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
2 citation, ...”;

3 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
4 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
5 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§
6 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC
7 Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

8 (e) Unlawful Deductions and Failure to Reimburse Business Expenses: For
9 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
10 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
11 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
12 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
13 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
14 pursuant to Labor Code § 2699(g)(1);

15 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
16 Defendants’ failure to provide Employees with all their required and earned sick days and all their
17 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
18 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
19 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to
20 Labor Code § 2699(g)(1);

21 (g) Failure to Maintain Temperatures: For failure to maintain temperature providing
22 reasonable comfort constituting violations of Labor Code §§ 1198 and 1199 and paragraph 15 of
23 the applicable IWC Wage Orders, and Labor Code § 2699.5, and seeking penalties available and
24 applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders,
25 and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

26 (h) Failure to Pay Reporting Time Pay: For Defendants failure to provide Employees
27 with all their required reporting time pay in violation of Wage Order 9-2001 and 8 § CCR
28 11090(5) and civil and statutory penalties available and applicable under Labor Code §§ 204, 558,

1 including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and
2 costs pursuant to Labor Code § 2699(g)(1); and

3 (i) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor
4 Code §§ 2810.5, and any above addressed violation of the applicable provisions of the Labor Code
5 and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5,
6 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of
7 the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
8 2699(g)(1).

9 166. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
10 seeks the penalties and remedies set forth in Labor Code § 558, which states:

11 (a) Any employer or other person acting on behalf of an employer who
12 violates, or causes to be violated, a section of this chapter or any provision
13 regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial
15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
16 which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
each underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages...

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

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

22 167. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
23 the LWDA and Defendants on October 27, 2023 (LWDA-CM-990305-23) addressing in detail the
24 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
25 theories to support the alleged violations and requested penalties. The LWDA has not provided
26 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
27 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
28 addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary

business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

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

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

16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

17. For penalties under Labor Code § 558, as may be proven;

18. For other wages and penalties under the Labor Code as may be proven;

19. For all general, special, and incidental damages as may be proven;

20. For an award of pre-judgment and post-judgment interest;

21. For an award providing for the payment of the costs of this suit;

22. For an award of attorneys' fees; and

23. For such other and further relief as this Court may deem proper and just.

DATED: December 22, 2023

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Jose Luis Rubalcava
Gamez and the putative class

DEMAND FOR JURY TRIAL

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

DATED: December 22, 2023

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Jose Luis Rubalcava
Gamez and the putative class

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205

Comprehensive Distribution Services, Inc.
Eun Jin Kang, Agent for Service of Process
18726 S Western Ave Ste 300
Gardena, CA 90248

Comprehensive Distribution Services, Inc.
2421 W 205th St Ste D-200
Torrance, CA 90501

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

[] (BY ELECTRONIC SERVICE) I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2023, at Glendale, California.

Katheryn Perez