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of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOSEPH ALESNA, an individual, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

GSJ CONSTRUCTION COMPANY, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 23CV009504

CLASS ACTION

Assigned for All Purposes To:
Hon. Lauri A. Damrell
Dept.: 28

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Records under §§ 226 and 1198;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;

BY FAX

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- 12. Violation of Business & Professions Code § 17200 *et seq.*; and
- 13. Civil Penalties under PAGA Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

Original Complaint Filed: October 5, 2023
Trial Date: None Set

1 Plaintiff JOSEPH ALESNA (hereinafter “Plaintiff”), on behalf of himself and other
2 similarly situated non-exempt, hourly employees employed during the relevant period by
3 Defendants in California (collectively, “Employees”; individually, “Employee”), complains of
4 Defendants, and each of them, 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 from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly Employees, including those employed
9 as roof leads, solar installers, roofers and in similar and related positions, by Defendants GSJ
10 CONSTRUCTION COMPANY, INC., a California stock corporation, and DOES 1 through 50
11 (all defendants referred to collectively as “Defendants”). Plaintiff alleges that Defendants, and
12 each of them, violated various provisions of the California Labor Code, relevant orders of the
13 Industrial Welfare Commission (“IWC”), and the California Business & Professions Code, and
14 seeks redress for these violations.

15 2. Plaintiff and the Class Members were employed as hourly, non-exempt Employees
16 by Defendants in positions generally pertaining to providing labor and solar installation services to
17 Defendant’ clients. Plaintiff, and upon information and belief the other similarly situated
18 Employees in the Class, were required to perform work tasks based out of Defendants’
19 warehouses and client-designated worksites in California. Plaintiff was employed by Defendants
20 as a lead roofer, and Defendants tasked him with duties that included assisting roofers with the
21 installation of solar panels and providing other labor services.

22 3. Defendants employed other similarly situated Employees as roofing and general
23 labor workers and in similar and related positions in providing solar installation and contracting
24 services to Defendants’ customers in Sacramento County and throughout California. Plaintiff and
25 the other similarly situated Class Members worked at Defendants’ behest without being paid all
26 wages due and without being provided all required breaks. More specifically, Plaintiff and the
27 other similarly situated Class Members were employed by Defendants and (1) shared similar job
28 duties and responsibilities (2) were subjected to the same policies and practices (3) and endured

1 similar violations at Defendants' hands.

2 4. Defendants required Plaintiff and the Employees in the Class to work off the clock,
3 but Defendants failed to accurately record the hours they were on the clock, failed to pay them at
4 the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
5 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
6 statements. Defendants also failed to provide Plaintiff and the Class Members with lawful meal
7 and rest periods, as Employees were required to remain under Defendants' control and were not
8 provided with the opportunity to take full uninterrupted and duty-free rest periods and meal
9 breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

10 5. Defendant GSJ CONSTRUCTION COMPANY, INC. is a California corporation
11 which lists its principal address in Roseville, California with the California Secretary of State. It
12 lists several registered corporate agents in Roseville, California. GSJ Construction Company, Inc.
13 lists its type of business as "Contracting." The wage statements issued to Plaintiff list "GSJ
14 Construction Company, Inc." as his employer with an address in Roseville, California.

15 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
17 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
18 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
19 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
20 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Sacramento County
21 and Defendants list a principal California address. Defendants also employ Class Members at
22 worksites throughout California.

23 7. The true names and capacities, whether individual, corporate, associate, or
24 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
25 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
26 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
27 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
28 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend

1 this Complaint to reflect the true names and capacities of the Defendants designated herein as
2 Does 1 through 50 when their identities become known.

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

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class, including Plaintiff, are non-exempt
16 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
17 (“IWC”). During the period of four years prior to the filing of this action through its resolution,
18 the Employee Class Members were employed by Defendants and worked in non-exempt
19 positions at the direction of Defendants in the State of California. Plaintiff and the Class
20 Members were either not paid by Defendants for all hours worked or were not paid at the
21 appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to
22 pay Plaintiff and the Class Members all wages due and owing, including compensation for off the
23 clock work, noncompliant meal and rest breaks, and Defendants’ failure to furnish accurate wage
24 statements, all in violation of various provisions of the California Labor Code and applicable
25 paragraphs of the IWC Wage Orders.

26 10. During the course of Plaintiff and the Class Members’ employment with
27 Defendants, they were not paid all wages they were owed, including for all hours they were
28 performing works tasks or remaining under Defendants’ control (resulting in “off the clock”

1 work) and for all their overtime hours worked, and they were not paid at the required rates for
2 overtime. This has resulted in systematic and ongoing violations of the California Labor Code
3 and relevant IWC Wage Orders. Upon information and belief, Defendants subjected Plaintiff and
4 the Class Members to similar policies and practices which resulted in similar violations as to the
5 other similarly situated non-exempt, hourly employees as roof leads, solar installers, labor
6 workers, and employees in related positions based out of their locations and client-designated
7 worksites in California.

8 11. Plaintiff was generally scheduled by Defendants to start work at 5:30 a.m.
9 Defendants typically neither scheduled nor provided Plaintiff with an estimated shift end time.
10 Plaintiff was expected to work until the job for the day was complete. Plaintiff's shift end times
11 generally varied anywhere from 1:00 p.m. to 7:00 p.m., depending on the job. It was common for
12 Plaintiff to work longer shifts with additional hours approved by Defendants to be paid at
13 overtime premium rates. However, Plaintiff was required by Defendants to endure substantial off
14 the clock work before and after his scheduled shift hours.

15 12. Defendants' policy and practice of requiring systematic off the clock work flowed
16 in part from their unlawful timekeeping procedures. Defendants would unlawfully record hours
17 reflecting that Employees took their meal periods. Yet, they were not contemporaneously
18 recorded with meal periods, nor could they be, considering that Defendants failed to authorize or
19 permit Employees to take lunch breaks. Defendants merely kept timekeeping records of meal
20 compliant break periods to avoid incurring and having to pay a meal premium penalty wage.
21 Additionally, by automatically deducting 30 minutes for a meal period, Defendants effectively
22 and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work
23 shifts.

24 13. When Plaintiff complained to Defendants' foreman about not receiving 30-minute
25 meal periods, Defendants' foreman informed Plaintiff that Defendants' employees are not
26 permitted to take breaks. If Plaintiff or Defendants' employees dared to attempt to take a meal
27 period, they received the cold shoulder and dirty looks from Defendants' foreman. On another
28 occasion, Defendants' foreman callously reminded Plaintiff that it is unfair to other employees if

1 Plaintiff were to take a lunch break while the others remain working on the roof.

2 14. Defendants also required Plaintiff to be prepared to work prior to his scheduled
3 start time, and he would be reprimanded if he was not. Plaintiff recalls being disciplined for
4 arriving at his scheduled start time. Plaintiff was told by Defendants' foreman that arriving on
5 time meant arriving at least 10 minutes prior to the start time. Defendants' timekeeping
6 procedures and practices did not account for such off the clock work.

7 15. Additionally, Plaintiff received calls on his personal cellphone during and after
8 work hours regarding work-related matters. Plaintiff felt as if he could not hang up or ask to
9 terminate these off-the-clock communications since Defendants' owner, the person who hired
10 Plaintiff, was typically the one who initiated them. Additional off the clock work occurred in the
11 form of Defendants' failure to compensate Plaintiff for such off-the-clock communications.

12 16. During his employment, overtime work occurred frequently. To whatever extent
13 Defendants paid this and any other form of remuneration to Employees in the Class, such as shift
14 differentials and the like, upon information and belief, Defendants failed to include it in the
15 regular rate used to calculate and pay the overtime that Defendants did pay.

16 17. Plaintiff was therefore not paid for all his hours worked at the required minimum,
17 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
18 and practice of requiring him to work off the clock and without pay. Defendants systematically
19 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
20 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
21 day at the required double time rate. Upon information and belief, the Class Members were bound
22 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
23 hands as Plaintiff. The above described off the clock work also resulted in Plaintiff not being paid
24 at the correct overtime rate for all his hours worked, as he was paid at a regular hourly rate for
25 time after eight hours when he should have been paid an overtime premium.

26 18. Defendants have either failed to maintain timekeeping records for Plaintiff that
27 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
28 required and the actual hours Plaintiff worked or the breaks he received or have otherwise

1 declined to produce them to Plaintiff in response to a timely and lawful records request. By
2 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the
3 Class Members, Defendants have committed knowing and intentional ongoing violations of the
4 record keeping requirements under the Labor Code, including section 1174, by either failing to
5 maintain records or retaining inaccurate ones.

6 19. The failure to pay for all hours worked and underpayment of wages to Plaintiff
7 and the Class Members is and has been a direct consequence of Defendants' unlawful
8 compensation policies and practices, which upon information and belief applied uniformly to the
9 Class Members at Defendants' warehouses and work sites throughout California. As a result of
10 the above-described unlawful requirements to work off the clock, the failure to accurately record
11 all hours worked and pay wages at the correct rates, and the other wage violations they endured at
12 Defendants' hands, Plaintiff and the Class Members were not properly paid all wages earned and
13 all wages owed to them by Defendants, including when working more than eight hours in any
14 given day and/or more than forty hours in any given week.

15 20. Therefore, from at least four years prior to the filing of this lawsuit and continuing
16 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
17 hours worked and failing to pay minimum wages for all time worked, as required by California
18 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
19 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
20 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
21 week in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

22 21. Defendants also failed to provide Plaintiff and the Class Members with their
23 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
24 Plaintiff's scheduled shift durations. The above described off the clock work contributed to
25 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
26 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
27 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
28 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the

1 IWC Wage Order(s).

2 22. More specifically, Plaintiff worked shifts that entitled him to at least one meal
3 period, but as addressed above, Defendants failed to schedule, authorize, and permit Plaintiff and
4 Class Members to take 30-minute lunch breaks. When Plaintiff questioned why he and other
5 Employees had not received their legally required breaks, Defendants' foreman informed Plaintiff
6 that Defendants' employees are not allowed to take them. Further, as mentioned above,
7 Defendants' foreman neglected to authorize and permit any breaks by explaining to Plaintiff it
8 would be unfair to the other Employees for him to take a lunch break while the others could not.
9 Defendants' practices and procedures, coupled with difficult to attain production goals and
10 management expectations, contributed to Employees working through meal breaks or not taking
11 them at all.

12 23. Additionally, Defendants inputted into their timekeeping system that Plaintiff and
13 Class Members took a 30-minute meal period and did so before the fifth hour of work as required
14 under the Labor Code and Wage Orders. Defendants thus recorded compliant meal breaks without
15 regard to whether the meal periods were taken, taken before the fifth hour of work, or taken in
16 their entirety without interruptions.

17 24. Therefore, meal period violations systematically occurred ongoing throughout all
18 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or a
19 premium wage payment in lieu thereof, and then also unlawfully deducted 30 minutes from
20 Plaintiff's hours worked for the day. To the extent Defendants did pay Plaintiff and the Class
21 members a meal period premium, upon information and belief they failed to pay them a premium
22 pay of one hour at the regular rate and/or failed to include all forms of remuneration beyond
23 hourly wages in the regular hourly rate used to pay the one-hour premium wage. Upon
24 information and belief, the other Class Members were subjected to similar unlawful policies and
25 practices and endured similar violations as Plaintiff.

26 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal
27 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
28 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class

Members were required to perform work as ordered by Defendants for more than five hours during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that required Employees to work during breaks, thus leading to further violations.

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

27. As a result, Defendants' failure to provide Plaintiff and the Class Members with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e., one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

28. Therefore, for at least four years prior to the filing of this action and through to the present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Class Members were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- (a) Class Members were not provided full thirty-minute duty free meal periods for work days in excess of five hours and were not compensated one hour's wages in lieu thereof, or were not compensated at the correct regular rate of compensation, all in violation of, among others, Labor Code §§ 226.7,

1 512, and the applicable Industrial Welfare Commission Wage Order(s);

2 (b) Class Members were not provided second full thirty-minute duty free meal
3 periods for work days in excess of ten hours;

4 (c) Class Members were required to work through at least part of their daily
5 meal period(s);

6 (d) Meal periods were provided after five hours of continuous work during a
7 shift; and

8 (e) Class Members were restricted in their ability to take a full thirty-minute
9 meal period.

10 29. Similar violations resulted from Defendants' failure to authorize and permit
11 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
12 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members
13 were either not authorized or permitted the opportunity to take a rest break, or were required to
14 remain under Defendants' control and respond to job demands. Defendants' foreman prohibited
15 Plaintiff and Class Members from leaving the worksite during meal and rest breaks. Defendants'
16 foreman enforced this practice by not only reminding Employees that breaks of any sort were
17 prohibited, but also by driving Plaintiff and Class Members to client-designated worksite location
18 in the company truck. Upon information and belief, Defendants thus also failed to authorize and
19 permit employees to leave the premises during rest breaks, evidencing Defendants' policy and
20 practice of requiring Plaintiff and the Class Members to remain under their control during what
21 was supposed to be required off-duty rest break times.

22 30. Rest breaks for the Class Members were neither scheduled nor contemplated by
23 Defendants, even on occasions where they worked over 10-hour shifts. Plaintiff cannot recall a
24 time during his employment with Defendants when he took a break, despite being entitled to
25 receive at least two paid, timely, uninterrupted, and duty-free net ten-minute rest breaks during
26 each of his work shifts.

27 31. Defendants' uniformly applied policies and practices thus typically resulted in a
28 failure to authorize and permit uninterrupted on-duty rest breaks. Plaintiff and the Class Members

1 worked shifts of at least eight hours, which required at least two rest breaks, and often worked
2 shifts over ten hours, which required at least three rest breaks. Even on occasions where Plaintiff
3 and Class Members worked over 10 hours, Defendants' foreman failed to authorize or permit
4 Plaintiff and other Class Members with at least one rest break per shift.

5 32. During rest periods, employers must relieve employees of all duties and relinquish
6 control over how employees spend their time. Plaintiff and the Class Members were and are
7 under Defendants' control when they are working through rest breaks and remaining under
8 Defendants' control. Plaintiff and the Employees in the Class were thus not authorized and
9 permitted to take lawful rest periods, were systematically required by Defendants to work through
10 or during breaks, and were not provided with one hour's wages in lieu thereof. They were
11 required to remain on-duty during breaks or portions of their breaks, thus making them either
12 untimely or shortened and on-duty, and they were also prevented from leaving the premises and
13 otherwise remain under Defendants' control during rest breaks under Defendants' uniformly
14 applied policies and practices. Rest period violations therefore arose in one or more of the
15 following manners:

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

24 33. 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 the above described off the clock work and
27 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
28 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely

1 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
2 that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted
3 at least 30 minutes of hours worked from each Employee's daily work shifts. In order to avoid
4 overtime, Defendants' foreman would also move Plaintiffs' clock in times to later ones as much as
5 needed to make meal periods appear timely. By not compensating Employees for all hours
6 worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

7 34. Defendants also violated California Labor Code § 246 by not providing all
8 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an
9 Employee who "works in California for the same employer for 30 or more days within a year
10 from the commencement of employment is entitled to paid sick days as specified in this section."
11 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
12 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
13 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
14 the Class Members during the relevant time period, including by failing to provide two work
15 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
16 248.2 and including damages and penalties as these sections are enforced through Labor Code §
17 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid
18 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
19 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
20 (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief
21 available for Defendants' failure to provide Employees with all their required and earned sick
22 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
23 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
24 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees
25 and costs pursuant to Labor Code § 2699(g)(1).

26 35. Upon information and belief, Defendants also failed to provide Employees such as
27 Plaintiff at the time of his employment and thereafter with written notice complying with all the
28 requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer

1 shall provide to each employee a written notice, in the language the employer normally uses to
2 communicate employment-related information to the employee, containing” specific required
3 information. Upon information and belief, Defendants failed to provide this information to the
4 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
5 provide Plaintiff and the aggrieved employee Class Members certain specific information upon
6 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
7 such information or provide it accurately when he was hired, or have failed to produce it to date,
8 and upon information and belief Defendants committed similar violations in connection with
9 similarly situated and aggrieved Class Members.

10 36. As a result of these illegal policies and practices, Defendants also engaged in and
11 enforced the following additional unlawful practices and policies against Plaintiff and the Class
12 Members he seeks to represent:

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

25 37. Defendants have also consistently failed to provide Class Members with timely,
26 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
27 including by the above-described requirement of off the clock work, failure to pay all overtime
28 and double time wages owed and failure to pay them at the appropriate premium rates, and failure

1 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
2 miscalculating any overtime or meal period or rest break premium wages and by the systematic
3 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
4 difficult to account with precision for the unlawfully withheld wages and meal and rest period
5 compensation owed to Plaintiff and the Class, during the liability period, including to the extent
6 they required off the clock work or automatically deducted hours or failed to pay overtime wages
7 at the overtime rate and to the extent they did not implement and preserve a record-keeping
8 method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and
9 paragraph 7 of the applicable California Wage Orders. Upon information and belief, recorded
10 hours worked were not maintained or were not accurately maintained for work shifts and meal
11 periods, which were automatically presumed by Defendants to have been lawfully provided when
12 they were not. Defendants also failed to accurately record and pay for all regular and overtime
13 hours worked and submitted by Plaintiff and the Class Members, including by failing to pay all
14 overtime hours at the correctly calculated overtime premium rate.

15 38. Defendants have thus also failed to comply with Labor Code § 226(a) by
16 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
17 Members, along with the appropriate applicable rates, among other requirements. Plaintiff and
18 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
19 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
20 applicable California IWC Wage Orders by failing to maintain time records showing when the
21 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
22 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
23 payment of wages and accurately reporting total hours worked.

24 39. Defendants also required Plaintiff and the Class Members to work hours off the
25 clock before and after their shifts for which they were not compensated. As addressed above,
26 Employees were required to endure off the clock work during the on-duty meal and rest periods
27 and were not provided with sick pay and supplemental sick leave and were subjected to systematic
28 off the clock work. Defendants also failed to pay all overtime premium wages owed for work

1 conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above.
2 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all
3 wages owed to Plaintiff and other similarly situated Employees at the time of their termination or
4 within seventy-two hours of their resignation, as required by California wage-and-hour laws.

5 40. Additionally, from at least four years prior to the filing of this lawsuit and
6 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
7 incur necessary business expenses in the course of performing their required job duties without
8 reimbursement. These include the cell phone-related expenses Plaintiff incurred in responding to
9 calls from Defendants' managers and tools required by the job, such as screwdrivers, impact
10 wrenches, drill, sockets, and so forth. Plaintiff and the Class Members must be reimbursed for
11 these necessary business expenses under Labor Code § 2802 and Defendants systematically failed
12 to do so.

13 41. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
14 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
15 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
16 1194.2 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8,
17 section 11000 *et seq.*

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

22 **CLASS ALLEGATIONS**

23 43. Plaintiff brings this class action on behalf of himself and all others similarly
24 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often
25 referred to as "the Class" or "Class Members") defined as follows: "All individuals employed by
26 Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and
27 ending on a date as determined by the Court ("the Class Period"), as non-exempt, hourly
28 employees by Defendant within the State of California." This definition includes but is not limited

1 to roof leads, solar installers, general labor workers, and employees in related. Further, Plaintiff
2 seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

17 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class Members
18 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
19 including by requiring off the clock work.

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

23 h. Subclass 8. Termination Pay Subclass. All Class Members who, within the
24 applicable limitations period, either voluntarily or involuntarily separated from their employment
25 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
26 termination.

27 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
28 Class Members who, within the applicable limitations period, were denied the right to inspect and

1 receive all their payroll records, timecards, and personnel records.

2 j. Subclass 10. Payroll Records Subclass. All Class Members who were subject to
3 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
4 by California wage-and-hour laws.

5 k. Subclass 11. Expense Reimbursement Subclass. All Class Members who incurred
6 necessary and reasonable expenses in connection with performing their job duties for Defendants
7 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

8 l. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a
9 result of Defendants' business acts and practices, to the extent such acts and practices are found to
10 be unlawful, deceptive, and/or unfair.

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

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

24 46. This action has been brought and may properly be maintained as a class action
25 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
26 of interest in this litigation and the proposed Class is easily ascertainable from the employment
27 records for Plaintiff and the Class Members that Defendants are required to maintain under
28 California law.

1 **A. Numerosity**

2 47. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of Class Member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
6 the Class definition within the State of California. Plaintiff alleges that Defendants' employment
7 records will provide information as to the number and location of all Class Members.

8 **B. Commonality**

9 48. There are questions of law and fact common to the Class that predominate over any
10 questions affecting only individual Class Members. The common questions are numerous and
11 substantial and flow from Defendants' uniform policies and/or practices of violating the California
12 Labor Code addressed above. As such, these common questions predominate over individual
13 questions concerning each individual Class Member's showing as to his or her eligibility for
14 recovery or as to the amount of damages. These common questions of law and fact include:

- 15 a. Whether Defendants failed to pay Employees minimum wages;
- 16 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 17 c. Whether Defendants failed to pay Employees overtime as required under Labor
18 Code § 510;
- 19 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
20 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
21 premium pay in lieu thereof;
- 22 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
23 Orders, by failing to authorize and permit Employees to take requisite rest breaks
24 or provide premium pay in lieu thereof;
- 25 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
26 providing employees with all required sick days and COVID-19 supplemental sick
27 leave;
- 28 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with

inaccurate wage statements;

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 Business and Professions Code § 17200 *et seq.*; and

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

C. Typicality

49. 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 he was required to endure are typical of those of the other Class Members.

D. Adequacy of Representation

50. 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

1 experienced and competent in litigating employment class actions.

2 **E. Superiority of Class Action**

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

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

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

26 54. Defendants, as prospective and actual employers of the Employees in the Class,
27 had a special fiduciary duty to disclose to prospective Class Members the true facts surrounding
28 Defendants' pay practices, policies and working conditions imposed upon the similarly situated

1 Employees as well as the effect of any alleged arbitration agreements that may have been forced
2 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
3 and policies, most notably intentionally refusing to pay for all hours actually worked which should
4 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
5 agreements and policies and practices on the Employees and Class as a whole.

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

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY MINIMUM WAGES**
15 **(Against All Defendants)**

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

18 57. Defendants failed to pay Employees minimum wages for all hours worked.
19 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
20 would work hours and not receive wages, including as alleged above in connection with off the
21 clock work, including all the time required to remain on duty and under Defendants' control
22 during breaks and due to the work demands placed upon them by Defendants' management by
23 the unlawful deduction of hours or by paying what should have been overtime hours as regular
24 hours. Defendants' uniformly applied policies required systematic off the clock work and
25 underpayment of all wages owed to Employees over a period of time, while benefiting
26 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
27 wages to Plaintiff and the Class Members, including by requiring systematic off the clock work.
28 To the extent any local wage ordinances were also applicable to paying the employees an hourly

1 rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances.
2 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
3 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
4 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
5 wage pay.

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

11 59. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
12 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
13 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
14 applicable minimum wage rate fixed by the commission for work during the relevant period is
15 found in the Wage Orders.

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

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

28 62. In committing these violations of the California Labor Code, Defendants

1 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
2 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
3 time worked by Plaintiff and other members of the Class, including by requiring off the clock
4 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
5 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
6 Welfare Commission requirements and other applicable laws and regulations. As a result of these
7 violations, Defendants also failed to timely pay all wages earned in accordance with California
8 Labor Code § 1194.

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

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

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

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

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

1 Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes.
2 To the extent minimum wage compensation is determined to be owed to the Class Members who
3 have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or
4 202, and therefore these individuals are also be entitled to waiting time penalties under California
5 Labor Code § 203, which penalties are sought herein on behalf of these Class Members.
6 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in
7 violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage
8 statements. Defendants' conduct as alleged herein was willful, intentional, and not in good faith.
9 Further, Plaintiff and other Class Members are entitled to seek and recover statutory costs.

10 **SECOND CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

15 69. California Labor Code § 1194 provides that "any employee receiving less than
16 the legal minimum wage or the legal overtime compensation applicable to the employee is entitled
17 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
18 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."
19 The action may be maintained directly against the employer in an employee's name without first
20 filing a claim with the Division of Labor Standards and Enforcement.

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

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

7 72. Defendants thus had a consistent policy of not paying Employees wages for all
8 hours worked, including hours at their required regular, overtime, and double-time rates.
9 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
10 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
11 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
12 the Class Members all earned and owed straight time and overtime wages and other benefits, in
13 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
14 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
15 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
16 employees to work through meal periods or remain under Defendants' control when they were
17 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
18 respond to demands from Defendants' foreman.

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

27 74. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance
28 of regular wages owed and overtime compensation for all hours worked, as required by

1 California law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the
2 applicable IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly
3 calculate the regular rate used to calculate and pay overtime, and meal and rest premiums, as
4 addressed above.

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

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

24 77. Employees have been damaged by these violations of California Labor Code
25 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally,
26 under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not
27 less than \$100 for causing Employees “to work for longer hours than those fixed, or under
28 conditions of labor prohibited by an order of the commission” or if the employer pays “a wage

1 less than the minimum fixed by an order of the commission” or “violates...any provision of this
2 chapter or any order or ruling of the commission.”

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

10 **THIRD CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

21 81. Defendants failed to provide Employees with meal periods as required under
22 the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often
23 required to work or to otherwise remain under Defendants’ control during meal periods, or
24 Defendants provided them after Employees worked beyond the fifth hour of their shifts or
25 Employees otherwise had them shortened and interrupted by work demands and requirements to
26 perform off the clock work and remain under Defendants’ control. Defendants also unlawfully
27 combined meal periods with rest breaks. Furthermore, upon information and belief, on the
28 occasions when Employees worked more than ten hours in a given shift, they did so without

1 receiving a second uninterrupted thirty-minute meal period as required by law.

2 82. Defendants thus failed to provide Plaintiff and the Class Members with meal
3 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
4 including by not providing them with the opportunity to take meal breaks, by providing them late
5 or for less than thirty minutes, or by requiring them to perform work during breaks.

6 83. Moreover, Defendants failed to compensate Employees for each meal period
7 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
8 and 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
9 employee a meal period in accordance with this section, the employer shall pay the employee one
10 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
11 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
12 period premiums, they upon information and belief underpaid them by miscalculating the regular
13 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
14 compensate the Employees in the Class for each meal period not provided or inadequately
15 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
16 Wage Order.

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

23 **FOURTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 86. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders

1 provide that employers must authorize and permit all employees to take rest periods at the rate of
2 ten minutes net rest time per four (4) work hours.

3 87. Employees consistently worked consecutive four hour shifts and were generally
4 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
5 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
6 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
7 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
8 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made little
9 effort to schedule or otherwise authorize and permit Plaintiff and the Class Members to take
10 lawful rest breaks. Employees were often required to work or to otherwise remain under
11 Defendants' control during rest periods, including by responding to work requirements and having
12 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
13 Class Members were also not permitted to leave their work premises during rest breaks.

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

18 89. Defendants, and each of them, have therefore intentionally and improperly
19 denied rest periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and
20 512 and paragraph 12 of the applicable IWC Wage Orders.

21 90. Defendants failed to authorize and permit Plaintiff and the Class Members to
22 take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate
23 Employees with an additional hour of pay at each Employee's hourly rate for each day that
24 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §
25 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders.

26 91. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
27 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
28 of wages at their effective hourly rates of pay for each day worked without the required rest

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

VIOLATION OF LABOR CODE § 226(a)

(Against All Defendants)

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

93. 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.

94. 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.

95. 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

1 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
3 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
4 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
5 Members with such timely and accurate wage and hour statements.

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

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

1 applicable IWC Wage Orders.

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

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

14 **SIXTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 221**
16 **(Against All Defendants)**

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

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

24 102. Defendants unlawfully received and/or collected wages from the Employees in
25 the Class by requiring off the clock work, by miscalculating or not paying overtime, and by
26 automatically deducting time for meal periods when they were not lawfully provided and not
27 paying one hour of pay at the regular rate of compensation for every meal and rest period violation
28 endured by Plaintiff and the other Class Members, as alleged above. In addition to failing to

1 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 additional minutes
2 meal periods that were rarely provided or otherwise received without violation. Defendants
3 effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's
4 daily work shifts. In order to avoid overtime, Defendants' foreman would also modify Plaintiffs'
5 clock in times to make record of a complaint meal period. Defendants' strict overtime avoidance
6 policy also compelled Plaintiff's manager to add what should have been overtime hours to payroll
7 as Plaintiff's sick days or paid time off days. By not compensating Employees for all hours
8 worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

9 103. As a direct and proximate cause of the unauthorized deductions, Employees
10 have been damaged, in an amount to be determined at trial.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 204**
13 **(Against All Defendants)**

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

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

1 following the close of the payroll period.

2 106. All wages due and owing to Plaintiff and the Class Members, including as
3 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
4 wages required by Labor Code § 1194 and other sections became due and payable to each
5 employee in each pay period that he or she was not provided with a meal period or rest period or
6 paid straight or overtime wages to which he or she was entitled.

7 107. Defendants violated Labor Code § 204 by systematically refusing to timely pay
8 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
9 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
10 payday for the period involved, not less than the applicable minimum wage for all hours worked in
11 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is
13 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
14 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
15 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

21 **EIGHTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 203**

23 **(Against All Defendants)**

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

26 110. Plaintiff and numerous Class Members are no longer employed by Defendants;
27 they either quit Defendants’ employ or were fired therefrom.

28 111. Defendants failed to pay these Employees all wages due and certain at the time

1 of termination or within seventy-two hours of resignation.

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

5 113. Defendants thus failed to pay Plaintiff and the Class Members without
6 abatement, all wages as defined by applicable California law. Among other things, these
7 Employees were not paid all regular and overtime wages, including by Defendants failing to pay
8 for all hours worked or requiring off the clock work or by unlawfully under-recording time entries
9 to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided
10 meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
11 wages within the required time was willful within the meaning of Labor Code § 203.

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

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

1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

10 118. During the course of Plaintiff's and Employees' employment, Defendants
11 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
12 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
13 premium pay as discussed above and failing to document and pay for actual hours worked.

14 119. Defendants are also required by the California Labor Code § 1198 and the
15 applicable Wage Order to maintain a tracking system that accurately records the times during
16 which Employees work.

17 120. Defendants have maintained a common unlawful policy and practice of failing
18 to accurately record all hours worked and all meal period start and end times and by adjusting or
19 otherwise rounding and shaving them down. Defendants also manipulated timekeeping records to
20 reflect less time worked or to shift time to avoid premiums.

21 121. Defendants' failure to pay wages, as alleged above, was willful in that
22 Defendants knew wages to be due but failed to pay them.

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

25 **TENTH CAUSE OF ACTION**

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

27 **(Against All Defendants)**

28 123. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set

1 forth in full herein.

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

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

18 126. Plaintiff sent written requests through his counsel to Defendants for his payroll
19 records, timecards, and personnel records. However, Plaintiff has not received all of his requested
20 records as of the date of this Complaint.

21 127. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to
22 timely produce the required records requested by Plaintiff.

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

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

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

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802

(Against All Defendants)

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

132. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work related expenses they incurred. Defendants required Plaintiff and the Class Members to use their personal cellular phones to communicate about work related business and failed to reimburse as addressed above. Defendants also required Plaintiff and Class Members to purchase and use their own tools to get the job done. Plaintiff and the Class Members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

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

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

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

TWELTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

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

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

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

1 139. Wage-and-hour laws express fundamental public policies. Paying employees
2 their wages and overtime, providing them with meal periods and rest breaks, etc., are
3 fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of
4 this State vigorously to enforce minimum labor standards, to ensure that employees are not
5 required or permitted to work under substandard and unlawful conditions, and to protect law-
6 abiding employers and their employees from competitors who lower costs to themselves by
7 failing to comply with minimum labor standards.

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

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

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

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

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

145. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

THIRTEENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

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

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

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

149. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

1 150. More specifically, after complying with the notice procedures of Labor Code
2 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
4 addressed underlying claims and seeking penalties as specified by the applicable corresponding
5 provisions, including as follows:

6 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
7 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
8 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
9 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
10 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
11 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
12 to Labor Code § 2699(g)(1);

13 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
14 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
15 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
16 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
17 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
18 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
19 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1);

21 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
22 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
23 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
24 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
26 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
27 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
28 providing inaccurate wage statements and failing to maintain records as required under Labor

Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

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

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

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

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

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

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
2 each pay period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages...

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

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

8 152. Plaintiff has exhausted his administrative remedies by submitting a certified
9 letter to the LWDA and Defendants on October 4, 2023 (LWDA Case No. CM-985642-23)
10 addressing in detail the specific provisions of the Labor Code Defendants have violated and
11 addressing the facts and legal theories to support the alleged violations and requested penalties.
12 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
13 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties
14 under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original
15 Complaint.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiff prays for the following relief:

- 18 1. For an order certifying this action as a class action;
- 19 2. For compensatory damages in the amount of the unpaid minimum wages for work
20 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
21 the filing of this action, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and
23 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 24 4. For compensatory damages in the amount of all unpaid wages, including overtime
25 and double-time pay, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
28 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

1 for each day requisite rest breaks were not provided or were deficiently provided where no
2 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
3 be proven;

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

5 8. For restitution and/or damages and penalties for Defendants' failure to pay all
6 wages due twice monthly under Labor Code § 204, as may be proven;

7 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
8 for all Class Members in violation of Labor Code § 221, as may be proven;

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

11 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

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

13 13. For damages and restitution for failure to reimburse all reasonable and necessary
14 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

15 14. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

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

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

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

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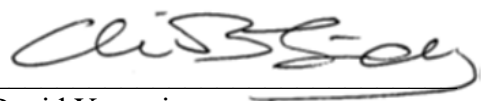
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- 21. For an award providing for the payment of the costs of this suit;
- 22. For an award of attorneys' fees; and
- 23. For such other and further relief as this Court may deem proper and just.

DATED: January 3, 2024

D.LAW
DAVID YEREMIAN & ASSOCIATES, INC.

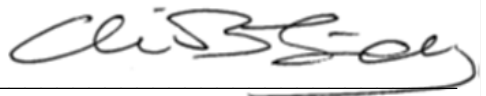
By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JOSEPH ALESNA
and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: January 3, 2024

D.LAW
DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JOSEPH ALESNA
and all others similarly situated

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

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

[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.

California.


Sasha Zambrano