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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

2/6/2024 11:20 AM

By: Leanne Landeros, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DAVID O'CONNOR, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

DIAL SECURITY, a California
corporation; DIAL COMMUNICATIONS,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2327264

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff David O'Connor, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 ("LWDA") in this case on November 29, 2023, until judgment ("non-party Aggrieved
14 Employees"). Plaintiff's share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought do not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over Defendants because, on information and belief,
20 Defendants are either citizens of California, have sufficient minimum contacts in California,
21 or otherwise intentionally avail themselves of the California market so as to render the
22 exercise of jurisdiction over them by the California courts consistent with traditional notions
23 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
24 action given that the State of California, as the real party in interest in this action, is not a
25 "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
26 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons within the
3 County of San Bernardino, and have violated the requirements of the California Labor Code
4 and applicable Wage Order in this county which give rise to the penalties sought in this
5 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
6 the California Labor Code and applicable Wage Order in at least one location within the
7 County of San Bernardino, including Defendants' location in Rancho Cucamonga (9311
8 Jersey Boulevard, Suite H, Rancho Cucamonga, California 91730). Pursuant to California
9 Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by
10 statute in the county in which the cause, or some part of the cause, arose. Because Defendants
11 have employees in San Bernardino County and Plaintiff could bring an action filed under
12 PAGA in any county in which an aggrieved employee worked and Labor Code violations
13 occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda*
14 *County*, 60 Cal. App. 5th 1069 (2021).

15 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
16 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
17 attorneys general their current or former employers for various civil penalties for violations of
18 various provisions in the California Labor Code.

19 THE PARTIES

20 6. Plaintiff David O'Connor is a resident of Burbank, in Los Angeles County,
21 California. Defendants employed Plaintiff as an hourly paid, non-exempt Technician and
22 Helper from approximately September 2021 to May 2023. During his employment, Plaintiff
23 typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's
24 primary job duties included, without limitation, assisting other technicians; running and
25 pulling wires; completing electrical work; and setting up alarms, cameras, and intercom
26 systems.

27 7. DIAL SECURITY was and is, upon information and belief, a California
28 corporation, and at all times hereinafter mentioned, an employer whose employees are

1 engaged throughout this county and the State of California.

2 8. DIAL COMMUNICATIONS was and is, upon information and belief, a
3 California corporation, and at all times hereinafter mentioned, an employer whose employees
4 are engaged throughout this county and the State of California.

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

9 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
10 were the partners, agents, owners, or managers of DIAL SECURITY and DIAL
11 COMMUNICATIONS at all relevant times.

12 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
13 acts and omissions alleged herein was performed by, or is attributable to, DIAL SECURITY;
14 DIAL COMMUNICATIONS; and/or DOES 1 through 10 (collectively, “Defendants” or
15 “DIAL”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
16 concert with, each of the other co-Defendants and was acting within the course and scope of
17 such agency, employment, joint venture, or concerted activity with legal authority to act on
18 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
19 the official policy of Defendants.

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

24 13. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

27 14. Under California law, Defendants are jointly and severally liable as employers
28 for the violations alleged herein because they have each exercised sufficient control over the

wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiff and other non-party Aggrieved Employees under the law.

15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;
- (b) jointly exercised meaningful control over Plaintiff’s and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;
- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their

1 employment.

2 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
3 there has existed a unity of interest and ownership between Defendants such that any
4 individuality and separateness between the entities has ceased.

5 17. DIAL SECURITY; DIAL COMMUNICATIONS; and DOES 1 through 10 are
6 therefore alter egos of each other.

7 18. Adherence to the fiction of the separate existence of Defendants would permit
8 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
9 from liability for the wrongful acts committed by them under the name DIAL SECURITY.

10 19. Plaintiff further alleges, upon information and belief, that Defendants DIAL
11 SECURITY and DIAL COMMUNICATIONS are alter egos of each other for the following
12 reasons:

- 13 (a) On the California Secretary of State's website
14 (<https://bizfileonline.sos.ca.gov/>), DIAL SECURITY and DIAL
15 COMMUNICATIONS share the same principal address and mailing
16 address of "760 W VENTURA BLVD, CAMARILLO, CA 93010";
- 17 (b) According to their most recent "Statement of Information" forms filed
18 with the California Secretary of State, DIAL SECURITY and DIAL
19 COMMUNICATIONS share the same Chief Executive Officer, William
20 H. Dundas; Secretary, Blake Dundas; Chief Financial Officer, Bill
21 Dundas; and Director, Melissa Dundas;
- 22 (c) On the California Secretary of State's website, DIAL SECURITY and
23 DIAL COMMUNICATIONS share the same agent for service of
24 process, William H[.] Dundas; and
- 25 (d) On information and belief, DIAL SECURITY and DIAL
26 COMMUNICATIONS utilize the same standardized employment forms
27 and issue the same employment policies.

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PAGA REPRESENTATIVE ALLEGATIONS

20. Defendants provide security services for residential and commercial properties which includes guard services, home and business alarm systems, video surveillance, access control, remote monitoring, and energy monitoring and savings. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Camarillo, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

21. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

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

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

24. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other non-party Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not

1 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
2 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
3 provided with payment of one (1) additional hour of pay at their regular rates of pay when
4 they were not authorized and permitted to take a compliant rest period.

5 30. Plaintiff is informed and believes, and thereon allege, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 recovery periods in accordance with the California Labor Code and applicable General
8 Industry Safety (“GIS”) Order or payment of one (1) additional hour of pay at their regular
9 rates of pay when they were not provided a compliant recovery period and that Plaintiff and
10 other non-party Aggrieved Employees were not provided with compliant recovery periods or
11 payment of one (1) additional hour of pay at their regular rates of pay when they were not
12 provided a compliant recovery period.

13 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive complete and accurate wage statements in accordance with California law. In
16 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
17 were not provided complete and accurate wage statements.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that they had a duty to maintain accurate and complete payroll records in
20 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
21 knowingly, and intentionally failed to do so.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 timely payment of all wages earned upon termination of employment. In violation of the
25 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
26 payment of all wages due, including, but not limited to, overtime wages; minimum wages;
27 meal, rest, and recovery period premiums; and/or reporting time pay, within permissible time
28 periods.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 timely payment of wages during their employment. In violation of the California Labor Code,
4 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
5 including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery
6 period premiums; and/or reporting time pay, within permissible time periods.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 receive all reporting time pay when Plaintiff and other non-party Aggrieved Employees were
10 required to report to work but were put to work for less than half of their usual or scheduled
11 shift. In violation of the California Labor Code and applicable IWC Wage Order, Defendants
12 did not pay Plaintiff and other non-party Aggrieved Employees all reporting time pay due.

13 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive reimbursement for all business-related expenses and costs they incurred during the
16 course and scope of their employment and that they did not receive reimbursement of
17 applicable business-related expenses and costs incurred.

18 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
21 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
22 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
23 that they were properly denied wages, all in order to increase Defendants' profits.

24 38. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
28 civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

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

5 40. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
7 or former employees and one or more of the alleged violations were committed against them.

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

- 11 (a) The aggrieved employee shall give written notice by online filing
12 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
13 to the employer of the specific provisions of the California Labor Code
14 alleged to have been violated, including the facts and theories to support
15 the alleged violations.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
20 employer and the aggrieved employee by certified mail that it does not
21 intend to investigate the alleged violation within sixty (60) calendar
22 days of the postmark date of the Employee’s Notice. Upon receipt of
23 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
24 five (65) calendar days of the postmark date of the Employee’s Notice,
25 the aggrieved employee may commence a civil action pursuant to
26 California Labor Code section 2699 to recover civil penalties in addition
27 to any other penalties to which the employee may be entitled.

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

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

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing to the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated (other than those listed in Section 2699.5), including the facts
8 and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice. The employer shall
14 give written notice by certified mail within that period of time to the
15 aggrieved employee or representative and the agency if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the employee may commence a
19 civil action pursuant to Section 2699.

20 43. On November 29, 2023, Plaintiff provided written notice by online filing to the
21 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
24 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
25 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
26 Plaintiff PAGA Case Number LWDA-CM-996905-23. A true and correct copy of Plaintiff's
27 written notice to the LWDA and Defendants dated November 29, 2023, is attached hereto as
28 "Exhibit 1."

1 44. As of the filing date of this amended complaint, over 65 days have passed since
2 Plaintiff sent the initial written notice described above, and the LWDA has not responded that
3 it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

4 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

8 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid" Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
17 as a private attorney general, seeks assessment and collection of civil penalties under Labor
18 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
19 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
20 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as private
21 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
22 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order.

24 47. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
26 Employees' rights by violating various sections of the California Labor Code as set forth
27 above.

28 48. As set forth below, Defendants have violated numerous provisions of both the

California Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least

- 1 minimum wages for all hours worked, as set forth below;
- 2 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
- 3 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
- 4 and other non-party Aggrieved Employees with meal periods, as set
- 5 forth below;
- 6 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 7 applicable IWC Wage Order for Defendants' failure to authorize and
- 8 permit Plaintiff and other non-party Aggrieved Employees to take rest
- 9 periods, as set forth below;
- 10 (e) Violation of Labor Code sections 226.7, 516, and 1198 for failure to
- 11 provide heat recovery periods to Plaintiff and other non-party Aggrieved
- 12 Employees, as set forth below;
- 13 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 14 IWC Wage Order for failure to provide accurate and complete wage
- 15 statements to Plaintiff and other non-party Aggrieved Employees, as set
- 16 forth below;
- 17 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 18 IWC Wage Order for failure to maintain payroll records, as set forth
- 19 below;
- 20 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 21 during employment, as set forth below;
- 22 (i) Violation of Labor Code sections 201 and 202 for failure to pay all
- 23 earned wages upon termination, as set forth below;
- 24 (j) Violation of Labor Code sections section 1198 and the applicable IWC
- 25 Wage Order for failure to pay reporting time pay when Plaintiff and
- 26 other non-party Aggrieved Employees were put to work for less than
- 27 half of their usual or scheduled shifts, as set forth below; and
- 28 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

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

56. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

1 in a day on the seventh (7th) day of work.

2 58. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
4 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
5 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
6 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
7 not recorded.

8 59. First, during the relevant period, Defendants had a company-wide rotating “on-
9 call” policy, whereby they scheduled Plaintiff and other non-party Aggrieved Employees to
10 work “on-call” weeks. During an “on-call” week, Plaintiff and other non-party Aggrieved
11 Employees had to be available to work 24 hours per day, seven (7) days per week. While
12 working an “on-call” week, Plaintiff and other non-party Aggrieved Employees were required
13 to respond to calls from customers that came in on Defendants’ after-hours hotline, and if
14 necessary, report to the customer’s location to address the security concern in-person. When
15 scheduled to be “on-call,” Plaintiff and other non-party Aggrieved Employees were, in
16 essence, on controlled standby for Defendants because they could not use that time freely for
17 their own purposes and were forced to put their lives on hold. For example, Plaintiff refrained
18 from making plans altogether while “on-call” because he knew that he had to drop whatever
19 he was doing at a moment’s notice if he received a call. On information and belief,
20 Defendants only paid Plaintiff and other non-party Aggrieved Employees a flat rate of \$75.00
21 per week during an “on-call” week, specifically for “standby time,” plus time they spent
22 driving to and from customers’ locations and responding to issues in-person. However,
23 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees for the time they
24 spent assisting customers over the phone and for the time they spent waiting for a call from
25 Defendants and were unable to use their time for their own purposes.

26 60. Second, during the relevant period, Defendants had a policy and/or practice of
27 discouraging and impeding Plaintiff and other non-party Aggrieved Employees from
28 recording hours worked that were outside of their scheduled shifts, in order to limit the

1 amount of overtime employees could accrue. Specifically, Defendants failed to implement a
2 timekeeping system at their jobsites and did not provide employees with any mechanism, such
3 as a time clock or electronic timekeeping system, to accurately track and record their hours
4 worked. Instead, Defendants' policy and/or practice was to require employees, including
5 Plaintiff and other non-party Aggrieved Employees, to fill out handwritten timesheets and to
6 submit them to management biweekly for review and approval. Upon information and belief,
7 Defendants' management frequently interlineated, altered, and/or falsified timesheets to
8 reflect compliant meal periods and/or rounded clock-in and clock-out times to the nearest
9 quarter of an hour to limit overtime hours employees were eligible to be compensated for.
10 Upon information and belief, Defendants' timekeeping policies are, and continue to be, unfair
11 and have, over time, resulted in the underpayment of wages to Plaintiff and other non-party
12 Aggrieved Employees. To the extent Defendants' timekeeping policies have taken away time
13 worked that was eligible for overtime, Plaintiff and other non-party Aggrieved Employees
14 have been denied overtime pay for all hours worked.

15 61. Third, Defendants have, systematically, and on a company-wide basis,
16 scheduled and dispatched their employees to complete time-sensitive jobs, which included
17 traveling to various locations and completing installations, without building in sufficient time
18 to allow for 30-minute meal periods, such that Plaintiff and other non-party Aggrieved
19 Employees were prevented from taking all timely, uninterrupted 30-minute meal periods and
20 forced to work off-the-clock during their meal periods to complete their assigned duties.
21 Completing the jobs could take longer than the time Defendants allotted for them, such that
22 Plaintiff and other non-party Aggrieved Employees were unable to take compliant meal
23 periods. In conjunction with varying job durations, travel time between jobsites could take
24 longer than anticipated due to traffic conditions, which further impeded Plaintiff and other
25 non-party Aggrieved Employees from taking compliant meal periods. Defendants also had a
26 practice of failing to schedule meal periods, which further caused Plaintiff and other non-party
27 Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
28 example, Plaintiff worked through his meal periods approximately twice per week due to

1 Defendants' scheduling practices and in order to meet Defendants' customer service
2 expectations and complete his assigned duties, time for which he was not paid (*see infra*).

3 62. Fourth, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
5 other non-party Aggrieved Employees to record compliant meal periods on their timesheets
6 and/or adjusted employee time records to reflect compliant meal periods, even when they did
7 not receive compliant meal periods. As a result, Plaintiff and other non-party Aggrieved
8 Employees were required to perform their assigned tasks off-the-clock (including during meal
9 periods) because Defendants wanted to avoid paying penalties for missed, interrupted, or
10 shortened meal periods. Thus, Defendants did not record all hours worked during meal
11 periods and Plaintiff and other non-party Aggrieved Employees performed work during meal
12 periods for which they were not paid.

13 63. Fifth, Defendants had, and continue to have, a company-wide policy and/or
14 practice of requiring employees to use personal mobile devices to communicate with
15 Defendants' management at all times, including during unpaid meal periods. Defendants
16 expected that Plaintiff and other non-party Aggrieved Employees respond to calls promptly to
17 discuss work-related matters. For example, Plaintiff had his meal periods interrupted by calls
18 from Defendants' management to request that he travel to a different jobsite. Further, Plaintiff
19 was required to respond to calls from Defendants' clients regarding issues with installed
20 services. However, Defendants did not compensate Plaintiff and other non-party Aggrieved
21 Employees for the time they spent communicating with Defendants' management and
22 customers regarding work-related issues during meal periods while off-the-clock.

23 64. Defendants knew or should have known that, as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 their assigned duties off-the-clock and during meal periods, and were suffered or permitted to
26 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
27 Employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a
28 week or more, much of this off-the-clock work qualified for overtime premium pay.

1 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
2 for all of the overtime hours they actually worked.

3 65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 the balance of overtime compensation, as required by California law, violates the provisions
5 of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

9 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

10 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
12 to be paid to employees, and the payment of a wage less than the minimum so fixed is
13 unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
16 Regs. Tit. 8, § 11040(2)(K) (defining "Hours Worked").

17 67. First, as stated above, Defendants systematically, and on a company-wide basis,
18 required Plaintiff and other non-party Aggrieved Employees to work "on-call" weeks during
19 which they had to put their lives on hold and were restricted from using that time freely for
20 their own purposes. Even though Plaintiff and other non-party Aggrieved Employees were
21 subject to Defendants' control during an "on-call" week, Defendants did not pay Plaintiff and
22 other non-party Aggrieved Employees at least minimum wages for all hours that they were
23 suffered or permitted to work. Additionally, Defendants failed to pay Plaintiff and other non-
24 party Aggrieved Employees for their time spent responding to calls after-hours and their time
25 spent waiting for a call from Defendants.

26 68. Second, as also stated, during the relevant time period, Defendants failed to
27 provide Plaintiff and other non-party Aggrieved Employees with an appropriate timekeeping
28 mechanism, such as a time clock or electronic timekeeping system, to accurately track and

1 record their hours worked. Instead, Defendants frequently interlineated, altered, and/or
2 falsified timesheets to reflect compliant meal periods and/or rounded clock-in and clock-out
3 times to the nearest quarter of an hour to limit overtime hours employees were eligible to be
4 compensated for. For example, Plaintiff was required to communicate with Defendants'
5 management regarding work-related matters outside of his scheduled shift times and had no
6 means of recording this time spent working.

7 69. Third, as stated above, due to Defendants' policy and/or practice of allowing
8 insufficient time to complete assigned jobs, failing to schedule meal periods, and requiring
9 employees to respond to calls at all times, Plaintiff and other non-party Aggrieved Employees
10 were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise
11 not relieved of all duties during meal periods. Moreover, as stated, in order to prevent
12 employees from accruing meal period penalties, upon information and belief, Defendants'
13 management pressured employees to record compliant meal periods on their timesheets and/or
14 adjusted Plaintiff's and other non-party Aggrieved Employees' time records even when meal
15 periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay
16 Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid
17 meal periods because these hours were not always correctly recorded.

18 70. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
19 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
20 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
21 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
22 1194, 1197, and 1198.

23 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
24 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
25 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

72. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

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

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

75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. During the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of scheduling time-sensitive jobs while allowing insufficient time for the employees to actually complete the jobs, which resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, Defendants had company-wide practice and/or policy of failing to schedule meal periods and

1 requiring employees to use personal mobile devices to communicate with management during
2 meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not
3 be relieved of their duties for compliant meal periods. For example, as stated, Plaintiff
4 worked through his meal periods twice per week and also had his meal periods interrupted a
5 few times per month by phone communications or work-related issues he needed to attend to
6 in order to complete his jobs within Defendants' management's expectations. As a further
7 example, about once a week, Plaintiff had to take his meal periods late, after the fifth hour of
8 work, due to certain jobs taking longer than expected to complete or certain jobsites being
9 further away and resulting in longer drive times. Thus, as a result of Defendants' policies
10 and/or practices, Plaintiff and other non-party Aggrieved Employees were forced to work in
11 excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or
12 missed their meal periods.

13 77. Defendants also did not provide Plaintiff and other non-party Aggrieved
14 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
15 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or
16 more hours per day but was never provided a second 30-minute meal period. Plaintiff and
17 other non-party Aggrieved Employees did not sign valid meal period waivers on days that
18 they were entitled to meal periods and were not relieved of all duties.

19 78. At all times herein mentioned, Defendants knew or should have known that, as
20 a result of these policies, Plaintiff and other non-party Aggrieved Employees were not actually
21 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
22 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
23 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

24 79. Furthermore, as set forth above, on information and belief, because Defendants
25 frowned upon employees accruing meal period penalties, Defendants' management pressured
26 Plaintiff and other non-party Aggrieved Employees to record compliant meal periods on their
27 timesheets and/or adjusted employee time records, regardless of whether they had received a
28 compliant meal period or not, in order to strictly limit meal penalties that would need to be

1 paid by Defendants. For example, at least a two times per week, Plaintiff was required to
2 record that he had received compliant meal periods on shifts when he had not, in fact, timely
3 received these meal periods. Further, to the extent that Defendants' practice of falsifying meal
4 period records and/or rounding meal period punch times resulted in records showing that
5 Plaintiff and other non-party Aggrieved Employees were provided with timely, full 30-minute
6 meal periods when, in fact, the meal periods were taken after the fifth hour of work or were
7 less than 30 minutes, Plaintiff and other non-party Aggrieved Employees did not receive meal
8 period penalties for these improperly rounded meal periods.

9 80. Furthermore, Defendants engaged in a company-wide practice and/or policy of
10 not paying all meal period premiums owed when compliant meal periods are not provided.
11 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
12 have not received premium pay for all missed, late, and interrupted meal periods. As a result,
13 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant
14 meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
15 to pay the full meal period premiums due.

16 81. Defendants' conduct violates the applicable IWC Wage Order, and California
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
18 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
19 558 and/or 2699(a), (f), and (g).

20 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

22 82. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
24 non-party Aggrieved Employees' employment by Defendants.

25 83. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

84. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

85. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

86. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide policy and/or practice of assigning time-sensitive jobs prevented Plaintiff and other non-party Aggrieved Employees from being able to take rest periods. Defendants also failed to schedule rest periods, which further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods. Moreover, as stated, Plaintiff and other non-party Aggrieved Employees were required to respond to communications from Defendants’ management on their personal mobile devices at all times, including during rest periods.

87. Furthermore, on information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which effectively required that Plaintiff and other non-party Aggrieved Employees remain on the work premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from

1 leaving the premises during rest periods, they were denied the ability to use their rest periods
2 freely for their own purposes, such as running personal errands. Thus, Defendants effectively
3 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
4 periods.

5 88. As a result, Plaintiff and other non-party Aggrieved Employees would work
6 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
7 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
8 Plaintiff had to forego his rest periods altogether, due to Defendants' management's
9 expectation that all employees work through their rest periods.

10 89. Defendants have also engaged in a systematic, company-wide practice and/or
11 policy of not paying rest period premiums owed when rest periods are not authorized and
12 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
13 Employees have not received premium pay for all missed rest periods. As a result,
14 Defendants denied Plaintiff and other non-party Aggrieved Employees rest periods and failed
15 to pay them rest period premiums due, in violation of Labor Code sections 226.7, 516, and
16 1198, and the applicable IWC Wage Order.

17 90. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
19 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 558 and/or 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE HEAT RECOVERY PERIODS**
22 **VIOLATION OF LABOR CODE §§ 226.7, 516, AND 1198, AND CALIFORNIA**
23 **CODE OF REGULATIONS TITLE 8, SECTION 3395**

24 91. At all relevant times herein set forth, the applicable GIS Order and California
25 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party
26 Aggrieved Employees' employment by Defendants.

27 92. At all relevant times, California Labor Code section 226.7(a) defines "recovery
28 period" to mean a cooldown period afforded an employee to prevent heat illness. California

1 Labor Code section 226.7 provides that no employer shall require an employee to work during
2 any recovery period mandated by an applicable order of the California IWC, the Occupational
3 Safety and Health Standards Board, or the Division of Occupational Safety and Health. The
4 applicable GIS Order provides that “[w]hen the outdoor temperature in the work area exceeds
5 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at
6 all times while employees are present that are either open to the air or provided with
7 ventilation or cooling.” Cal. Code Regs. Tit. 8, § 3395(d)(1). Furthermore, “[t]he amount of
8 shade present shall be at least enough to accommodate the number of employees on recovery
9 or rest periods, so that they can sit in a normal posture fully in the shade without having to be
10 in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take
11 a preventative cool-down rest in the shade when they feel the need to do so to protect
12 themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

13 93. During the relevant time period, Defendants violated California Labor Code
14 section 226.7 and California Code of Regulations, Title 8, section 3395(d), because
15 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with
16 recovery periods. For example, Plaintiff was not provided shaded areas for recovery and was
17 not permitted to take recovery periods in a shaded area while working at various jobsites even
18 though some of his work was performed outside under the sun and in high temperatures.

19 94. Defendants also have engaged in a company-wide practice and/or policy of not
20 paying recovery period premiums owed when compliant recovery periods were not provided.
21 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
22 have not received premium pay for missed recovery periods.

23 95. Defendants’ conduct violates the applicable GIS Order and California Labor
24 Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
25 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
26 2699(a), (f), and (g).

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28 //

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

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

97. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

99. Second, and separately from these violations, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section

1 226(a)(8) is to provide California employees with transparency as to the true identity of their
2 employer, to allow the employee to contact their employer during employment or in the future
3 for various reasons, including filing an administrative claim, judicial claim, or other action to
4 seek relief against their employer, to obtain unemployment benefits, etc. During the relevant
5 time period, Defendants systematically, and on a company-wide basis, issued wage statements
6 to Plaintiff and other non-party Aggrieved Employees that fail to list the employing entity's
7 address at all.

8 100. The wage statement deficiencies also include, without limitation, failing to list
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
10 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
11 for which employees were paid; failing to list the name of the employee and only the last four
12 digits of his or her social security number or an employee identification number other than a
13 social security number; failing to list the name of the legal entity that is the employer; and/or
14 failing to state all hours worked as a result of not recording or stating hours worked off-the-
15 clock.

16 101. California Labor Code section 1174(d) provides that “[e]very person employing
17 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or
22 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
23 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
24 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
25 as a result of failing to record the off-the-clock hours that they worked and improperly
26 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

27 102. California Labor Code section 1198 provides that the maximum hours of work
28 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as

1 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
2 employment of any employees for longer hours than those fixed by the order or under
3 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
4 Wage Order, employers are required to keep accurate time records showing when the
5 employee begins and ends each work period. During the relevant time period, Defendants
6 engaged in company-wide practices and/or policies of failing to record actual hours worked
7 (including falsifying time records by recording that compliant meal periods were taken
8 regardless if or when meal periods were actually taken), and thereby failed to keep accurate
9 records of work period and meal period start and end times for Plaintiff and other non-party
10 Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’
11 failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute
12 meal periods to which they were entitled, Defendants kept no records of meal start and end
13 times for second meal periods.

14 103. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
15 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
16 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

17 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

18 **VIOLATION OF LABOR CODE SECTION 204**

19 104. At all times relevant herein set forth, Labor Code section 204 provides that all
20 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
21 days, inclusive, of any calendar month, other than those wages due upon termination of an
22 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
23 the month during which the labor was performed. At all times relevant herein, Labor Code
24 section 204 provides that all wages earned by any person in any employment between the
25 sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due
26 upon termination of an employee, are due and payable between the first (1st) and the tenth
27 (10th) day of the following month.

28 105. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned for labor in excess of the normal work period shall be paid no later than the payday for
2 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
3 204 provides that the requirements of this section are deemed satisfied by the payment of
4 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
5 seven (7) calendar days following the close of the payroll period.

6 106. During the relevant time period, Defendants willfully failed to pay Plaintiff and
7 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
8 wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay,
9 within the time periods specified by California Labor Code section 204.

10 107. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
11 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

12 **FAILURE TO PAY WAGES UPON TERMINATION**

13 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

14 108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
15 that if an employer discharges an employee, the wages earned and unpaid at the time of
16 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
17 her employment, his or her wages shall become due and payable not later than seventy-two
18 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
19 his or her intention to quit, in which case the employee is entitled to his or her wages at the
20 time of quitting.

21 109. On information and belief, Defendants have a company-wide practice and/or
22 policy of paying departing employees their final wages late, instead of adhering to the time
23 requirements set forth in Labor Code sections 201 and 202. For example, Defendants
24 terminated Plaintiff in-person on or about May 22, 2023; however, Defendants did not provide
25 Plaintiff with his final paycheck until a few days after he was terminated. Thus, Defendants
26 failed to pay Plaintiff his final wages immediately, in violation of California Labor Code
27 section 201.

28 110. Additionally, Defendants willfully failed to pay Plaintiff and other non-party

1 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
2 wages set forth above, including but not limited to, overtime wages; minimum wages; meal,
3 rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge,
4 or within seventy-two (72) hours of their leaving Defendants' employ.

5 111. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
6 who are no longer employed by Defendants their wages earned and unpaid at the time of
7 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
8 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
10 2699(a), (f), and (g).

11 **FAILURE TO PAY REPORTING TIME PAY**

12 **VIOLATION OF LABOR CODE SECTION 1198**

13 112. California Labor Code section 1198 dictates that no employer may employ an
14 employee under conditions of labor that are prohibited by the applicable IWC wage order.
15 California Labor Code section 1198 further requires that ". . . the standard conditions of labor
16 fixed by the commission shall be the . . . standard conditions of labor for employees. The
17 employment of any employee . . . under conditions of labor prohibited by the order is
18 unlawful."

19 113. The applicable IWC Wage Order, California Code of Regulations, Title 8,
20 section 11040(5)(A), provides that "[e]ach workday an employee is required to report to the
21 work site and does report, but is not put to work or is furnished less than half of his/her usual
22 or scheduled day's work, the employer shall be pay him/her for half the usual or scheduled
23 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
24 employee's regular rate of pay, which shall not be less than the minimum wage." The
25 "primary purpose of the reporting time regulation" is "to guarantee at least partial
26 compensation for employees who report to work expecting to work a specified number of
27 hours, and who are deprived of that amount because of inadequate scheduling or lack of
28 proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

1 114. During the relevant time period, Defendants violated California Labor Code
2 section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because
3 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
4 pay when they reported to work for their usual or scheduled shift but were put to work for less
5 than half of their usual or scheduled day's work.

6 115. As stated, Defendants had a company-wide "on-call" policy, whereby they
7 scheduled Plaintiff and other non-party Aggrieved Employees to work "on-call," or on
8 standby. When scheduled for a "on-call" or standby shift, Plaintiff and other non-party
9 Aggrieved Employees regularly presented themselves as ready for work by waiting for the
10 Defendants to call them during their scheduled standby shift regarding responding to customer
11 calls on the after-hours hotline and would await instructions on whether to report to the
12 customer's location to address the security concern in-person. When this occurred,
13 Defendants did not pay Plaintiff and other non-party Aggrieved Employees for at least half of
14 their scheduled day's work or the minimum reporting time pay when they were subject to
15 Defendants' "on-call" policy and were ultimately not called.

16 116. Also, Defendants had a company-wide practice and/or policy of sending
17 Plaintiff and other non-party Aggrieved Employees home early from their shifts, including
18 before they had worked at least half of their usual or scheduled shift, but would not pay
19 Plaintiff and other non-party Aggrieved Employees for half of their scheduled shift. For
20 example, a few times during his employment, when scheduled to work an eight (8) hour shift,
21 Plaintiff was sent home by Defendants within 20 minutes of reporting to work and before he
22 had an opportunity to work at least half of his scheduled shift. On these occasions, on
23 information and belief, Defendant did not pay Plaintiff at all for his time worked. Although
24 Plaintiff and other non-party Aggrieved Employees reported to work based on the schedule
25 that was provided to them, Defendants would send them home before they worked at least half
26 of their usual or scheduled shifts. When this occurred, Defendants did not pay Plaintiff and
27 other non-party Aggrieved Employees for at least half of their scheduled day's work or the
28 minimum reporting time pay.

117. Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A). Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover from Defendants unpaid wages and interest.

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

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

119. First, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Plaintiff was required to use his personal cellular phone and mobile data to communicate with Defendants' management, Defendant's clients, and other employees about work-related matters. Although Defendants required Plaintiff and other non-party Aggrieved Employees to use their personal mobile devices and mobile data to carry out their work-related duties, Defendants failed to fully reimburse them for their costs incurred.

120. Second, during the relevant time period, Defendants required Plaintiff and other

1 non-party Aggrieved Employees to purchase tools and equipment necessary for the
2 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
3 example, Plaintiff spent about \$1,500 on various hand tools, such as screw drivers, pliers, and
4 power drills, because Defendants failed to provide him with the necessary tools which were
5 required to perform his duties. Although Defendants required Plaintiff and other non-party
6 Aggrieved Employees to purchase and use their own tools or equipment in the performance of
7 their duties, they did not reimburse them for these expenses.

8 121. Defendants could have provided Plaintiff and other non-party Aggrieved
9 Employees with the actual tools for use on the job, such as company mobile devices and
10 necessary tools and equipment. Or, Defendants could have reimbursed employees for their
11 mobile device usage and tools/equipment. At all relevant times, Plaintiff did not earn at least
12 two (2) times the minimum wage.

13 122. Defendants' company-wide policy and/or practice of not reimbursing
14 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
15 and other non-party Aggrieved Employees violates California Labor Code section 2802.
16 Defendants have intentionally and willfully failed to reimburse Plaintiff and other non-party
17 Aggrieved Employees for necessary business-related expenses and costs.

18 123. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
19 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
24 judgment against Defendants, jointly and severally, as follows:

25 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
26 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
27 amount.
28

As to the First Cause of Action

2. That the Court declare, adjudge, and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226.7, 516, and 1198 (by failing to provide heat recovery periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); reporting time; 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

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

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

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

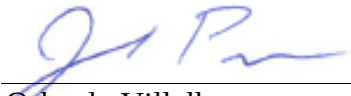
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1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: February 6, 2024

Respectfully submitted,

5
6 Capstone Law APC

7 By: 

8 Orlando Villalba

Helga Hakimi

9 Joseph D. Parsons

10 Attorneys for Plaintiff David O'Connor
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EXHIBIT “1”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

November 29, 2023

VIA ONLINE SUBMISSION

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

Subject: *David O'Connor v. Dial Security, et al.*

Dear PAGA Administrator:

This office represents David O'Connor in connection with his claims under the California Labor Code. Mr. O'Connor was an employee of DIAL SECURITY and/or DIAL COMMUNICATIONS. For the purpose of this letter, Mr. O'Connor collectively refers to these entities as "DIAL."

The employers may be contacted directly at the addressed below:

DIAL SECURITY
760 W VENTURA BLVD
CAMARILLO, CA 93010

DIAL COMMUNICATIONS
760 W VENTURA BLVD
CAMARILLO, CA 93010

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

DIAL employed Mr. O'Connor as an hourly paid, non-exempt employee from approximately September 2021 to May 2023. Mr. O'Connor worked for DIAL as a Technician and Helper out of its location in Camarillo, California. Mr. O'Connor typically worked eight (8) or more hours per day and five (5) days per week. Mr. O'Connor was compensated approximately \$28.00 per hour. His job duties included, without limitation, assisting other technicians; running and pulling wires; completing electrical work; and setting up alarms, cameras, and intercom systems.

DIAL committed one or more of the following Labor Code violations against Mr. O'Connor, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

DIAL's Company-Wide and Uniform Payroll and HR Practices

DIAL SECURITY and DIAL COMMUNICATIONS are California corporations. Together, they provide security services for residential and commercial properties which includes guard services, home and business alarm systems, video surveillance, access control, remote monitoring, and energy monitoring and savings. Upon information and belief, DIAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Camarillo, California, for all non-exempt, hourly paid employees working for DIAL in California, including Mr. O'Connor and other aggrieved employees. At all relevant times, DIAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. O'Connor and other aggrieved employees, regardless of their location or position.

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

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

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

DIAL willfully failed to pay all overtime wages owed to Mr. O'Connor and other aggrieved employees. During the relevant time period, Mr. O'Connor and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, DIAL had a company-wide rotating “on-call” policy, whereby it scheduled Mr. O’Connor and other aggrieved employees to work “on-call” weeks. During an “on-call” week, Mr. O’Connor and other aggrieved employees had to be available to work 24 hours per day, seven (7) days per week. While working an “on-call” week, Mr. O’Connor and other aggrieved employees were required to respond to calls from customers that came in on DIAL’s after-hours hotline, and if necessary, report to the customer’s location to address the security concern in-person. When scheduled to be “on-call,” Mr. O’Connor and other aggrieved employees were, in essence, on controlled standby for DIAL because they could not use that time freely for their own purposes and were forced to put their lives on hold. For example, Mr. O’Connor refrained from making plans altogether while “on-call” because he knew that he had to drop whatever he was doing at a moment’s notice if he received a call. On information and belief, DIAL only paid Mr. O’Connor and other aggrieved employees a flat rate of \$75.00 per week during an “on-call” week, specifically for “standby time,” plus time they spent driving to and from customers’ locations and responding to issues in-person. However, DIAL failed to pay Mr. O’Connor and other aggrieved employees for the time they spent assisting customers over the phone and for the time they spent waiting for a call from DIAL and were unable to use their time for their own purposes.

Second, during the relevant period, DIAL had a policy and/or practice of discouraging and impeding Mr. O’Connor and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. Specifically, DIAL failed to implement a timekeeping system at its jobsites and did not provide employees with any mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, DIAL’s policy and/or practice was to require employees, including Mr. O’Connor and other aggrieved employees, to fill out handwritten timesheets and to submit them to management biweekly for review and approval. Upon information and belief, DIAL’s management frequently interlineated, altered, and/or falsified timesheets to reflect compliant meal periods and/or rounded clock-in and clock-out times to the nearest quarter of an hour to limit overtime hours employees were eligible to be compensated for. Upon information and belief, DIAL’s timekeeping policies are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. O’Connor and other aggrieved employees. To the extent DIAL’s timekeeping policies have taken away time worked that was eligible for overtime, Mr. O’Connor and other aggrieved employees have been denied overtime pay for all hours worked.

Third, DIAL has, systematically, and on a company-wide basis, scheduled and dispatched its employees to complete time-sensitive jobs, which included traveling to various locations and completing installations, without building in sufficient time to allow for 30-minute meal periods, such that Mr. O’Connor and other aggrieved employees were prevented from taking all timely, uninterrupted 30-minute meal periods and forced to work off-the-clock during their meal periods to complete their assigned duties. Completing the jobs could take longer than the time DIAL allotted for them, such that Mr. O’Connor and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying job durations, travel time between jobsites could take longer than anticipated due to traffic conditions, which further impeded Mr. O’Connor and other aggrieved employees from taking compliant meal periods. DIAL also had a practice of failing to schedule meal periods, which further caused Mr. O’Connor and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. O’Connor worked through his meal periods approximately twice per week due to DIAL’s scheduling practices and in order to meet

DIAL's customer service expectations and complete his assigned duties, time for which he was not paid (*see infra*).

Fourth, on information and belief, because DIAL frowned upon employees accruing meal period penalties, DIAL's management pressured Mr. O'Connor and other aggrieved employees to record compliant meal periods on their timesheets and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive compliant meal periods. As a result, Mr. O'Connor and other aggrieved employees were required to perform their assigned tasks off-the-clock (including during meal periods) because DIAL wanted to avoid paying penalties for missed, interrupted, or shortened meal periods. Thus, DIAL did not record all hours worked during meal periods and Mr. O'Connor and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, DIAL had, and continues to have, a company-wide policy and/or practice of requiring employees to use personal mobile devices to communicate with DIAL's management at all times, including during unpaid meal periods. DIAL expected that Mr. O'Connor and other aggrieved employees respond to calls promptly to discuss work-related matters. For example, Mr. O'Connor had his meal periods interrupted by calls from DIAL's management to request that he travel to a different jobsite. Further, Mr. O'Connor was required to respond to calls from DIAL's clients regarding issues with installed services. However, DIAL did not compensate Mr. O'Connor and other aggrieved employees for the time they spent communicating with DIAL's management and customers regarding work-related issues during meal periods while off-the-clock.

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

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11040(2)(K) (defining “Hours Worked”).

First, as stated above, DIAL systematically, and on a company-wide basis, required Mr. O’Connor and other aggrieved employees to work “on-call” weeks during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Mr. O’Connor and other aggrieved employees were subject to DIAL’s control during an “on-call” week, DIAL did not pay Mr. O’Connor and other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work. Additionally, DIAL failed to pay Mr. O’Connor and other aggrieved employees for their time spent responding to calls after-hours and their time spent waiting for a call from DIAL.

Second, as also stated, during the relevant time period, DIAL failed to provide Mr. O’Connor and other aggrieved employees with an appropriate timekeeping mechanism, such as a time clock or electronic timekeeping system, to accurately track and record their hours worked. Instead, DIAL frequently interlineated, altered, and/or falsified timesheets to reflect compliant meal periods and/or rounded clock-in and clock-out times to the nearest quarter of an hour to limit overtime hours employees were eligible to be compensated for. For example, Mr. O’Connor was required to communicate with DIAL’s management regarding work-related matters outside of his scheduled shift times and had no means of recording this time spent working.

Third, as stated above, due to DIAL’s policy and/or practice of allowing insufficient time to complete assigned jobs, failing to schedule meal periods, and requiring employees to respond to calls at all times, Mr. O’Connor and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, DIAL’s management pressured employees to record compliant meal periods on their timesheets and/or adjusted Mr. O’Connor’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, DIAL systematically failed to pay Mr. O’Connor and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

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

During the relevant time period, as stated, DIAL had, and continues to have, a company-wide policy and/or practice of scheduling time-sensitive jobs while allowing insufficient time for the employees to actually complete the jobs, which resulted in a lack of meal period coverage and prevented Mr. O’Connor and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, DIAL had a company-wide practice and/or policy of failing to schedule meal periods and requiring employees to use personal mobile devices to communicate with management during meal periods, which further caused Mr. O’Connor and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, as stated, Mr. O’Connor worked through his meal periods twice per week and also had his meal periods interrupted a few times per month by phone communications or work-related issues he needed to attend to in order to complete his jobs within DIAL’s management’s expectations. As a further example, about once a week, Mr. O’Connor had to take his meal periods late, after the fifth hour of work, due to certain jobs taking longer than expected to complete or certain jobsites being further away and resulting in longer drive times. Thus, as a result of DIAL’s policies and/or practices, Mr. O’Connor and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or missed their meal periods.

DIAL also did not provide Mr. O’Connor and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. O’Connor worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. O’Connor and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, DIAL knew or should have known that, as a result of these policies, Mr. O’Connor and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. DIAL further knew or should have known that DIAL did not pay Mr. O’Connor and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Furthermore, as set forth above, on information and belief, because DIAL frowned upon employees accruing meal period penalties, DIAL's management pressured Mr. O'Connor and other aggrieved employees to record compliant meal periods on their timesheets and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DIAL. For example, at least two times per week, Mr. O'Connor was required to record that he had received compliant meal periods on shifts when he had not, in fact, timely received these meal periods. Further, to the extent that DIAL's practice of falsifying meal period records and/or rounding meal period punch times resulted in records showing that Mr. O'Connor and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. O'Connor and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

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

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

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

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

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

During the relevant time period, DIAL regularly failed to authorize and permit Mr. O'Connor and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked

or major fraction thereof. As with meal periods, DIAL's company-wide policy and/or practice of assigning time-sensitive jobs prevented Mr. O'Connor and other aggrieved employees from being able to take rest periods. DIAL also failed to schedule rest periods, which further led to Mr. O'Connor and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, Mr. O'Connor and other aggrieved employees were required to respond to communications from DIAL's management on their personal mobile devices at all times, including during rest periods.

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

As a result of DIAL's practices and policies, Mr. O'Connor and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. O'Connor had to forego his rest periods altogether, due to DIAL's management's expectation that all employees work through their rest periods.

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

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

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are

either open to the air or provided with ventilation or cooling.” Cal. Code Regs. tit. 8, § 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other.” *Id.* “Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.” *Id.*

During the relevant time period, DIAL violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because DIAL failed to provide Mr. O’Connor and other aggrieved employees with recovery periods. For example, Mr. O’Connor was not provided shaded areas for recovery and was not permitted to take recovery periods in a shaded area while working at various jobsites even though some of his work was performed outside under the sun and in high temperatures.

DIAL also has engaged in a company-wide practice and/or policy of not paying all recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. O’Connor and other aggrieved employees have not received premium pay for all missed recovery periods. Alternatively, to the extent that DIAL did pay other aggrieved employees for missed recovery periods, DIAL did not pay other aggrieved employees at the correct rate of pay, because DIAL systematically failed to include all compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DIAL failed to authorize and permit all recovery periods in violation of California Labor Code sections 226.7, 516, and 1198, and California Code of Regulations, Title 8, section 3395. Mr. O’Connor and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, DIAL has knowingly and intentionally provided Mr. O’Connor and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DIAL issued uniform wage statements to Mr. O’Connor and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal, rest, and recovery period premiums, and the

corresponding number of hours worked at each hourly rate. Specifically, DIAL violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Second, because DIAL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal, rest, and recovery period premiums, DIAL did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, DIAL failed to list the correct amount of net wages in violation of section 226(a)(5). DIAL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal, rest, and recovery period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, DIAL issued uniform wage statements to Mr. O'Connor and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, DIAL systematically, and on a company-wide basis, issued wage statements to Mr. O'Connor and other aggrieved employees that fail to list the employing entity's address at all.

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

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

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

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

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

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

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

During the relevant time period, DIAL willfully failed to pay Mr. O’Connor and other aggrieved employees all wages due including, but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

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

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

On information and belief, DIAL has a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, DIAL terminated Mr. O'Connor in-person on or about May 22, 2023; however, DIAL did not provide Mr. O'Connor with his final paycheck until a few days after he was terminated. Thus, DIAL failed to pay Mr. O'Connor his final wages immediately, in violation of California Labor Code section 201.

Additionally, DIAL willfully failed to pay Mr. O'Connor and other aggrieved employees who are no longer employed by DIAL the earned and unpaid wages set forth above, including but not limited to, overtime wages; minimum wages; meal, rest, and recovery period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving DIAL's employ.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11040(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, DIAL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because DIAL failed to pay Mr. O'Connor and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

As stated, DIAL had a company-wide “on-call” policy, whereby it scheduled Mr. O’Connor and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. O’Connor and other aggrieved employees regularly presented themselves as ready for work by waiting for the DIAL to call them during their scheduled standby shift regarding responding to customer calls on the after-hours hotline and would await instructions on whether to report to the customer’s location to address the security concern in-person. When this occurred, DIAL did not pay Mr. O’Connor and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject to DIAL’s “on-call” policy and were ultimately not called.

Also, DIAL had a company-wide practice and/or policy of sending Mr. O’Connor and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. O’Connor and other aggrieved employees for half of their scheduled shift. For example, a few times during his employment, when scheduled to work an eight (8) hour shift, Mr. O’Connor was sent home by DIAL within 20 minutes of reporting to work and before he had an opportunity to work at least half of his scheduled shift. On these occasions, on information and belief, DIAL did not pay Mr. O’Connor at all for his time worked. Although Mr. O’Connor and other aggrieved employees reported to work based on the schedule that was provided to them, DIAL would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, DIAL did not pay Mr. O’Connor and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay.

Mr. O’Connor and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, DIAL, on a company-wide basis, required Mr. O’Connor and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Mr. O’Connor was required to use his personal cellular phone and mobile data to communicate with DIAL’s management, DIAL’s clients, and other employees about work-related matters. Although DIAL required Mr. O’Connor and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, DIAL failed to fully reimburse them for their costs incurred.

Second, during the relevant time period, DIAL required Mr. O'Connor and other aggrieved employees to purchase tools and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. O'Connor spent about \$1,500 on various hand tools, such as screw drivers, pliers, and power drills, because DIAL failed to provide him with the necessary tools which were required to perform his duties. Although DIAL required Mr. O'Connor and other aggrieved employees to purchase and use their own tools or equipment in the performance of their duties, it did not reimburse them for these expenses.

DIAL could have provided Mr. O'Connor and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and necessary tools and equipment. Or, DIAL could have reimbursed employees for their mobile device usage and tools/equipment. At all relevant times, Mr. O'Connor did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is shown within a light gray rectangular box.

Ninel Kocharyan

Copy: DIAL SECURITY (via U.S. Certified Mail); DIAL COMMUNICATIONS (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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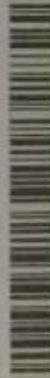
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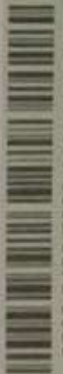
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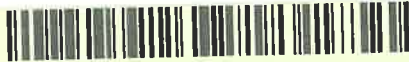
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- ☐ Collect on Delivery Restricted Delivery
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2 Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

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A. Signature

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☒ Agent☐ Addressee

B. Received by (Printed Name)

RY CIA

C. Date of Delivery

12/1/23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☒ No

Service Type

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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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2. Article Number (Transfer from service label)

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LAL

☒ Agent☐ Addressee

B. Received by (Printed Name)

RY CIA

C. Date of Delivery

12/1/23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☒ No

Service Type

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

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- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

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PROOF OF SERVICE

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

On **February 6, 2024**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Michael H. Brody
mbrody@lightgablerlaw.com
Thomas Solmer
tsomer@lightgablerlaw.com
LightGabler LLC
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
805-248-7208
805-248-7209 (fax)

Attorneys for Defendants:
DIAL SECURITY
DIAL COMMUNICATIONS

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

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

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

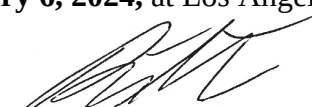
☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 6, 2024**, at Los Angeles, California.

Riley McIntire

Type/Print Name



Signature