

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff KYLE CHASE, on behalf
of himself and others similarly situated

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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

KYLE CHASE, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

ALLIED GARDENS TOWING, INC., a
Delaware corporation; ROADONE WEST,
INC., a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2023-00050188-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Robert Longstreth

Dept.: C-65

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Records, Labor Code §§ 226 And 1198;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: November 17, 2023

Trial Date: None Set.

1 Plaintiff KYLE CHASE (hereinafter “Plaintiff”), on behalf of himself and other similarly
2 situated non-exempt, hourly employees employed by Defendants within the state of California
3 during the relevant time period (collectively, “Employees”; individually, “Employee”), complains
4 of Defendants, and each of them, as follows:

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees, including those employed
9 as tow truck drivers, yard techs, and in similar and related positions, by Defendants ALLIED
10 GARDENS TOWING, INC., a Delaware corporation; ROADONE WEST, INC., a Delaware
11 corporation; and DOES 1 through 50, inclusive (all defendants being collectively referred to
12 herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
13 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
14 (“IWC”), and the California Business & Professions Code, and seeks redress for these violations.

15 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
16 Defendants in positions generally pertaining to providing towing and freeway services to
17 Defendants’ customers. Plaintiff, and upon information and belief the other similarly situated
18 Employees in the Class, were required to perform work tasks based out of the areas and
19 communities in California that Defendants provide services in. Plaintiff was employed by
20 Defendants as a tow truck driver during the relevant period, and Defendants tasked him with
21 duties that included providing tow truck services and conducting freeway or roadside assistance
22 services, such as tire changes, jump starts, and filling gas tanks.

23 3. Defendants employed other similarly situated Employees in similar and related
24 positions based out of Defendants’ yard or jobsites and in the areas and communities throughout
25 California in which Defendants provide services, including in the cities of Chula Vista, Kearny
26 Mesa, Escondido, National City, El Cajon, and San Diego, and San Marcos where Plaintiff was
27 employed. Plaintiff and the other similarly situated Class Members worked at Defendants’ behest
28 without being paid all wages due and without being provided all required breaks. More

specifically, Plaintiff and the other similarly situated Class Members were employed by Defendants and (1) shared similar job duties and responsibilities, (2) were subjected to the same policies and practices, and (3) endured similar violations at Defendants' hands.

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

5. Defendant Allied Gardens Towing, Inc. is a Delaware corporation which lists its principal address in San Diego, California with the California Secretary of State. It also lists a registered corporate agent with an address in San Diego, California and in San Diego County. Allied Gardens Towing, Inc. lists its type of business as "Towing and Storage." Upon information and belief, Allied Gardens Towing, Inc. ("Allied Gardens") operates and provides services in San Diego county, including in the cities of Chula Vista, Kearny Mesa, Encinitas, Escondido, National City, El Cajon, San Diego, and San Marcos. The wage statements issued to Plaintiff list "Allied Gardens Towing, Inc." as his employer with the same address in San Diego, California.

6. Upon information and belief, Allied Gardens is a sub-entity of or was acquired by Defendant RoadOne West, Inc. ("RoadOne West") or otherwise is related or affiliated to it in connection with providing towing and freeway services in San Diego County and throughout California. Like Allied Gardens Towing, RoadOne West lists the same principal address in San Diego, California and also lists the same designated agent with the same San Diego, California address with the Secretary of State. Moreover, RoadOne West's website states that "[o]nly 1 company has the resources to provide professional towing services throughout San Diego

1 County. RoadOne San Diego is that company.” Their website further provides that RoadOne
2 West has locations in San Diego county, including in at least 6 of the same locations that Allied
3 Gardens Towing operates its yards. Additionally, RoadOne West lists its type of business as
4 “Administration,” and upon information, RoadOne West and Allied Gardens jointly employed
5 Plaintiff and the other Class Members working there.

6 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
8 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
9 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
10 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
11 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Diego County
12 and Defendants listed the city of San Diego as its principal California address. Defendants also
13 employ Class Members at jobsites and yards in San Diego County and throughout California.

14 8. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
16 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code
17 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
18 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 50 when their identities become known.

22 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, created and
28 implemented the policies and practices that governed the employment of Plaintiff and the Class

Members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class Members to work, or engaged them, thereby creating a common law employment relationship with the Employee Class Members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class Members.

FACTUAL BACKGROUND

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

11. During the course of Plaintiff and the Class Members’ employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as tow truck drivers, yard techs, and in similar and related positions based out of their job site locations and yards in California.

12. Plaintiff was generally scheduled to work four to six days per week for ten to fourteen hours per shift, with shift times generally spanning from 5:30 a.m. through 6:30 p.m. On many occasions, Plaintiff was also required to work longer shifts with an additional hour or two of time approved by Defendants to be paid at overtime premium rates. However, Plaintiff was also required to endure substantial off the clock work before and after his scheduled shift hours.

1 13. Defendants' policy and practice of requiring systematic off the clock work flowed
2 in part from their unlawful timekeeping procedures. Although Defendants required timekeeping
3 entries for clocking in and clocking out of shifts on a time clock, Defendants did not require time
4 clocks to enter start and end times for lunch breaks. Rather than maintaining time entries that
5 reflect the actual times Plaintiff and Class Members were on and off the clock, Defendants
6 merely recorded that they took a thirty-minute meal break. Moreover, Defendants had the ability
7 to record real time meal periods given that all of the Defendants' trucks were equipped with an
8 iPad and that Plaintiff and Class Members were required to record their routes and breaks to the
9 minute. In spite of this, Defendants failed to take these records into account as part of their
10 timekeeping procedures or failed to implement a timekeeping mechanism that reflects the actual
11 time Plaintiff and Class Members were on and off the clock.

12 14. Additionally, Defendants recorded that Plaintiff and Class Members took thirty
13 minutes for a meal period and did so before the fifth hour of work as required under the Labor
14 Code and Wage Orders. Defendants thus recorded a compliant meal break without regard to
15 whether they were actually taken on time or for the full duration or were interrupted by dispatcher
16 or management demands and other work requirements. Additionally, by deducting 30 minutes for
17 a meal that was generally not lawfully provided if at all, Defendants effectively and unlawfully
18 deducted at least 30 minutes of hours worked from each Employee's daily work shifts.

19 15. Defendants also required Plaintiff to be prepared to begin work at his scheduled
20 shift start time, and he would be reprimanded if he was not. Although, Defendants' managers
21 typically allowed Plaintiff to clock in within an allotted time of 10-15 minutes prior to his
22 scheduled start time so that he would be prepared to being working at the start, Plaintiff often
23 worked well before this allotted time or was otherwise required to remain under Defendants'
24 control and was not compensated for such work. Plaintiff recalls Defendants' managers insisting
25 that Plaintiff would not be compensated for work done prior to the allotted time, despite the fact
26 that Defendants' managers frequently required Plaintiff to work prior to the allotted time if he
27 arrived earlier. Plaintiff particularly recalls Defendants asking him to complete a task or asking
28 him to fill out paperwork prior to the allotted time or prior clocking in. Additionally, Defendants

1 also required Plaintiff and Class Members to complete a COVID questionnaire process prior to
2 clocking in, and Defendants would prohibit Plaintiff and Class Members from clocking in until
3 the questionnaire was complete. Thus, Defendants timekeeping policies and practices failed to
4 account for COVID screenings and for work conducted prior to the allotted time or otherwise for
5 work conducted prior to clocking in. Plaintiff was also compelled not to record such time.

6 16. Defendants' managers also contacted Plaintiff by calling his personal cell phone
7 regarding work related matters and scheduling and would do so throughout the work day, during
8 breaks, and after work hours. Plaintiff also frequently received radio dispatches during his meal
9 and rest breaks and he was required to respond and perform other work duties and remain under
10 Defendants' control rather than enjoy his break. Additional off the clock work occurred in the
11 form of the unlawful deduction of 30 minutes of hours worked for an alleged meal period that
12 was generally provided untimely if at all.

13 17. Overtime hours were permissible subject to manager approval, and if Plaintiff was
14 required to work beyond scheduled hours without that approval, Defendants instructed him to
15 record fewer hours worked, or Defendants' managers would alter timekeeping records to
16 eliminate the unapproved overtime. Demands from managers and the difficult to attain processing
17 and production goals they required compelled Plaintiff to work many hours off the clock and
18 without compensation. Additionally, during the first two years of Plaintiff's employment with
19 Defendants, Defendants paid Plaintiff and the Class Members performance based bonuses when
20 they attained difficult to reach goals. To whatever extent Defendants paid this and any other form
21 of remuneration to Employees in the Class, such as shift differentials and the like, Defendants
22 failed to include it in the regular rate used to calculate and pay the overtime Defendants did pay.

23 18. Plaintiff was therefore not paid for all his hours worked at the required minimum,
24 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
25 and practice of requiring him to work off the clock and without pay. Defendants systematically
26 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
27 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
28 day at the required double time rate. Upon information and belief, the Class Members were bound

1 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
2 hands as Plaintiff.

3 19. Defendants have either failed to maintain timekeeping records for Plaintiff that
4 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
5 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
6 declined to produce them to Plaintiff in response to a timely and lawful records request. By
7 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the
8 Class Members, Defendants have committed knowing and intentional ongoing violations of the
9 record keeping requirements under the Labor Code, including section 1174, by either failing to
10 maintain records or retaining inaccurate ones.

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

21 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
22 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
23 hours worked and failing to pay minimum wages for all time worked, as required by California
24 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
25 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
26 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
27 week and double-time rates for all hours worked in excess of twelve hours a day, in violation of
28 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

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

9 23. More specifically, Plaintiff typically worked shifts of more than 10 hours, and
10 therefore, Plaintiff should have generally been entitled to at least two meal periods. Nevertheless,
11 Defendants attempted schedule one meal period for Plaintiff around 9:30 a.m. Defendants'
12 managers recorded that Plaintiff took 30 minutes for his meal period and would deduct that time
13 from hours worked for the shift. To whatever extent Defendants scheduled a meal period, it went
14 by the wayside quickly as there always seemed to be a customer issue to attend to or a radio
15 dispatch or call to respond to. This led to systematically late meal periods, if they were provided at
16 all, and on-duty meal periods that were incessantly interrupted by customer, dispatcher, or
17 management demands and required job duties and tasks to be performed and required Employees
18 to remain under Defendants' control during breaks. The difficult to attain production goals and
19 management expectations also contributed to Employees working through meal periods or not
20 taking them or taking them late so work could be accomplished or they were required to remain
21 under Defendants' control during meal periods.

22 24. Additionally, Defendants inputted into the timekeeping system that Plaintiff and
23 Class Members took a full 30 minutes for a meal period and did so before the fifth hour of work as
24 required under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Class
25 Members to thus record compliant meal breaks without regard to whether they were actually taken
26 on time or for the full duration or were interrupted by customer and management demands and
27 other work requirements. Plaintiff recalls generally that any meal period he was ever able to take
28 was interrupted by dispatches or calls from the manager or dispatcher, despite the fact that

1 Defendants automatically deducted 30 minutes for a meal period on each work shift without
2 regard to whether it was actually taken or was otherwise unlawful.

3 25. Therefore, meal period violations systematically occurred ongoing throughout all
4 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
5 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
6 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
7 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
8 premium payment. Upon information and belief, the other Class Members were subjected to
9 similar unlawful policies and practices and endured similar violations as Plaintiff.

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

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

25 28. Defendants thus followed uniformly applied policies of not providing all required
26 meal periods to their Employees. Meal periods were often not properly provided, as work
27 demands as well as radio and phone time impermissibly shortened their breaks. Even when
28 Plaintiff and the Class Members were able to take a meal period, it was generally interrupted by

1 work duties or was taken after the fifth hour of work. Additionally, as addressed above,
2 Defendants followed a practice of requiring off the clock work in a manner that would impact
3 when Employees were to receive meal periods and rest breaks, thus leading to further violations.

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

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

- 17 (a) Class Members were not provided full thirty-minute duty free meal periods
18 for work days in excess of five hours and were not compensated one hour's
19 wages in lieu thereof, or were not compensated at the correct regular rate
20 of compensation, all in violation of, among others, Labor Code §§ 226.7,
21 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 22 (b) Class Members were not provided second full thirty-minute duty free meal
23 periods for work days in excess of ten hours;
- 24 (c) Class Members were required to work through at least part of their daily
25 meal period(s);
- 26 (d) Meal periods were provided after five hours of continuous work during a
27 shift; and
- 28 (e) Class Members were restricted in their ability to take a full thirty-minute

meal period.

31. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff recalls occasionally receiving two fifteen-minute rest breaks during shifts typically ranging 10-12 hours. However, Plaintiff and the other similarly situated Class Members were either not authorized and permitted the opportunity to take a rest break or were required to remain under Defendants' control and respond to calls, dispatches, and instructions from the dispatcher and manager as well as job and customer demands if and when they even attempted to take one. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members to remain under their control during required off-duty rest break times.

32. Defendants' Employee Handbook requires that Plaintiff take one fifteen-minute rest period during each four-hour shift. In spite of this, Defendants would time and again fail to schedule to contemplate rest breaks despite Plaintiff being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten-minute rest breaks during each of his work shifts. This practice again unlawfully failed to pay Employees for rest break time, which must be compensated at the regular rate.

33. Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class Members worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. Even on the occasions when Defendants authorized and permitted Plaintiff to take a first rest break, he was not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirement.

34. During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Class Members were and are under Defendants' control when they are working through rest breaks and remaining under

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

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

18 35. From at least four years prior to the filing of this lawsuit and continuing to the
19 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
20 deducting the Employees' earned wages, including by the above described off the clock work and
21 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
22 breaks, Defendants unlawfully deducted up to 30 additional minutes for meal periods that were
23 rarely provided or otherwise received without violation. Thus, Defendants effectively and
24 unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts.
25 By not compensating Employees for all hours worked, Defendants unlawfully deducted wages
26 earned in violation of Labor Code § 221.

27 36. Defendants also violated California Labor Code § 246 by not providing all
28 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an

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

18 37. Upon information and belief, Defendants also failed to provide Employees such as
19 Plaintiff at the time of his employment and thereafter with written notice complying with all the
20 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
21 shall provide to each employee a written notice, in the language the employer normally uses to
22 communicate employment-related information to the employee, containing” specific required
23 information. Upon information and belief, Defendants failed to provide this information to the
24 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
25 provide Plaintiff and the aggrieved employee Class Members certain specific information upon
26 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
27 any such information when he was hired, or have failed to produce them, and upon information
28 and belief Defendants committed similar violations in connection with similarly situated and

1 aggrieved Class Members.

2 38. As a result of these illegal policies and practices, Defendants also engaged in and
3 enforced the following additional unlawful practices and policies against Plaintiff and the Class
4 Members he seeks to represent:

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

17 39. Defendants have also consistently failed to provide Class Members with timely,
18 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
19 including by the above-described requirement of off the clock work, failure to pay all overtime
20 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
21 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
22 miscalculating any overtime or meal period or rest break premium wages and by the systematic
23 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
24 difficult to account with precision for the unlawfully withheld wages and meal and rest period
25 compensation owed to Plaintiff and the Class, during the liability period, including because they
26 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
27 and because they did not implement and preserve a record-keeping method as required for non-
28 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable

1 California Wage Orders. Upon information and belief, time clock punches were not maintained or
2 were not accurately maintained for work shifts and meal periods, which were automatically
3 presumed by Defendants to have been lawfully provided when they were not. Defendants also
4 failed to accurately record and pay for all regular and overtime hours worked and submitted by
5 Plaintiff and the Class Members, including by failing to pay all overtime hours at the correctly
6 calculated overtime premium rate.

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

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

25 42. Additionally, from at least four years prior to the filing of this lawsuit and
26 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
27 incur necessary business expenses in the course of performing their required job duties without
28 reimbursement. These included cellphone related expenses Plaintiff incurred in responding to calls

1 from his Manager as well as tools and equipment that Plaintiff and Class Members were required
2 to purchase to get the job done. Although the company provided some tools, Defendants failed to
3 fix or replace tools that were essential for Plaintiff and Class Members to fulfill their job duties.
4 As a result, Plaintiff and Class Members were required to take their own tools, such as electric tire
5 irons, air ratchet wrenches, and tire gauche. Plaintiff estimates that the tools cost him about \$500.
6 Plaintiff also regularly made protective gear purchases for gloves and rain gear required for the
7 job. Additionally, Defendants required Plaintiff and Class Members to purchase their uniforms
8 required for the job and failed to reimburse them.

9 43. Plaintiff time and again purchased tools, equipment, and protective gear, and in
10 spite of this, Defendants made deductions from Plaintiff's pay for "Supplies." Upon information
11 and belief, Defendants made such deduction for uniform or tools. Plaintiff's paystubs provided by
12 Defendant fail to show reimbursement for these items, and Plaintiff and the Class Members must
13 be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
14 systematically failed to do so.

15 44. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
16 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
17 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
18 1194.2 1197, 1198, 1198.5, 1199, and 2802, 2698 *et seq.*, and California Code of Regulations,
19 Title 8, section 11000 *et seq.*

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

24 **CLASS ALLEGATIONS**

25 46. Plaintiff brings this class action on behalf of herself and all others similarly situated
26 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often referred to as
27 "the Class" or "Class Members") defined as follows: "All individuals employed by Defendants at
28 any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date

as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by Defendants within the State of California.” This includes all types of tow truck drivers, yard techs, and those in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment

1 records for Plaintiff and the Class Members that Defendants are required to maintain under
2 California law.

3 **A. Numerosity**

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

10 **B. Commonality**

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

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

1 leave;

- 2 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
3 inaccurate wage statements;
- 4 h. Whether Defendants violated Labor Code § 221;
- 5 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
6 wages and compensation due and owing at the time of termination of employment;
- 7 j. Whether Defendants' conduct was willful;
- 8 k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the
9 IWC Wage Orders by failing to maintain accurate records of Class Members'
10 earned wages and work periods;
- 11 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
12 Employees during the relevant time period for all hours worked, whether regular or
13 overtime;
- 14 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
15 wages earned at least twice monthly;
- 16 n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
17 business expenses incurred by Employees;
- 18 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 19 p. Whether Employees are entitled to equitable relief pursuant to Business and
20 Professions Code § 17200 *et seq.*

21 **C. Typicality**

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

28 ///

1 **D. Adequacy of Representation**

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

5 **E. Superiority of Class Action**

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

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

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

60. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' managers, dispatcher, and customers and by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the

1 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
2 Class Members, including by requiring systematic off the clock work. To the extent any local
3 wage ordinances were also applicable to paying the employees an hourly rate above the
4 minimum wage rate, Defendants failed to comply with the local wage ordinances. Defendants'
5 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
6 the Class as a whole, as a result of implementing a uniform policy and practice that denied
7 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

1 the absence of a contractually agreed upon one.

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

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

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

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

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

25 70. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages
26 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
27 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
28 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other

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

12 **SECOND CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

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

1 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
2 work in a workweek.

3 74. Defendants had a consistent policy of not paying Employees wages for all hours
4 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
5 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
6 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
7 and pay overtime and failed to begin paying overtime when it was incurred due to the off the clock
8 work, as detailed above. Defendants' managers also moved hours that should have been paid at
9 overtime premium rates to regular hours.

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

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

1 otherwise work off the clock to complete their daily job duties.

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

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

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

26 80. Employees have been damaged by these violations of California Labor Code §§
27 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
28 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less

1 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
2 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
3 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
4 any order or ruling of the commission.”

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

12 **THIRD CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

23 84. Defendants failed to provide Employees with meal periods as required under the
24 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
25 to work or to otherwise remain under Defendants’ control during meal periods, or Defendants
26 provided them after Employees worked beyond the fifth hour of their shifts or Employees
27 otherwise had them shortened and interrupted by work demands and requirements to perform off
28 the clock work and remain under Defendants’ control. Defendants also unlawfully combined meal

1 periods with rest breaks. Furthermore, upon information and belief, on the occasions when
2 Employees worked more than ten hours in a given shift, they did so without receiving a second
3 uninterrupted thirty-minute meal period as required by law.

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

9 90. Employees consistently worked consecutive four hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
11 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
12 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
13 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
14 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
15 to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest
16 breaks. Employees were often required to work or to otherwise remain under Defendants' control
17 during rest periods, including by responding to work requirements, and had breaks provided
18 untimely as a result of the above described off the clock work. Plaintiff and the Class Members
19 were also not permitted to leave their work premises during rest breaks.

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

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

27 93. Defendants failed to authorize and permit Plaintiff and the Class Members to take
28 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees

1 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
2 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
3 12 and 20 of the applicable IWC Wage Orders.

4 94. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
5 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
6 of wages at their effective hourly rates of pay for each day worked without the required rest
7 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

9 **FIFTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

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

14 96. California Labor Code § 226(a) requires an employer to furnish each of his or her
15 employees with an accurate, itemized statement in writing showing the gross and net earnings,
16 total hours worked, and the corresponding number of hours worked at each hourly rate; these
17 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
18 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
19 statements may be given to the employee separately from the payment of wages; in either case the
20 employer must give the employee these statements twice a month or each time wages are paid.

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

28 98. Throughout the liability period, Defendants intentionally failed to furnish to

1 Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately
2 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
3 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
4 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
5 the employee and only the last four digits of his or her social security number or an employee
6 identification number other than a social security number, (8) the name and address of the legal
7 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
9 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
10 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
11 Members with such timely and accurate wage and hour statements.

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

28 100. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers

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

8 101. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
9 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
10 Class suffered injuries, including among other things confusion over whether they received all
11 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
12 them to make mathematical computations to analyze whether the wages paid in fact compensated
13 them correctly for all hours worked.

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

20 **SIXTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 221**
22 **(Against All Defendants)**

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

25 104. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee.”
27 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
28 public policy, an employer must timely pay its employees for all hours worked. Defendants failed

1 to do so.

2 105. Defendants unlawfully received and/or collected wages from the Employees in the
3 Class by requiring off the clock work, by miscalculating overtime, and by automatically deducting
4 time for meal periods when they were not lawfully provided and not paying one hour of pay at the
5 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the
6 other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks,
7 Defendants unlawfully deducted up to 30 additional minutes for meal periods that were rarely
8 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
9 meal period that was generally not lawfully provided if at all, Defendants effectively and
10 unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts.
11 In order to avoid overtime, Defendants' managers would also move Plaintiffs' clock in times to
12 later ones as much as needed to offset any unapproved overtime or to make a late meal period
13 timely. By not compensating Employees for all hours worked, Defendants unlawfully deducted
14 wages earned in violation of Labor Code § 221.

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

17 **SEVENTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 204**
19 **(Against All Defendants)**

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

22 108. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
23 employment are due and payable twice during each calendar month, on days designated in
24 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
26 during which the labor was performed, and labor performed between the 16th and the last day,
27 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
28 month." Additionally, the requirements of this section shall be deemed satisfied by the payment of

1 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
2 calendar days following the close of the payroll period.” As detailed above, Defendants
3 maintained a consistently applied policy and practice of not paying all wages earned between the
4 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
5 between the 16th and the last day of the month between the 1st and 10th day of the following month.
6 Defendants similarly failed to pay all wages earned by not more than seven calendar days
7 following the close of the payroll period.

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

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

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

27 ///

28 ///

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

113. Plaintiff and numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

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

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

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

117. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer

1 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
2 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
3 “violates...any provision of this chapter or any order or ruling of the commission.”

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

8 **NINTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

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

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

17 121. During the course of Plaintiff’s and Employees’ employment, Defendants
18 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
19 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
20 premium pay as discussed above and failing to document and pay for actual hours worked.

21 122. Defendants are also required by the California Labor Code § 1198 and the
22 applicable Wage Order to maintain a tracking system that accurately records the times during
23 which Employees work.

24 123. Defendants have maintained a common unlawful policy and practice of failing to
25 accurately record all hours worked and all meal period start and end times and by adjusting or
26 otherwise rounding and shaving them down.

27 124. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
28 knew wages to be due but failed to pay them.

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

3 **TENTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

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

13 128. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
14 or his or her representative, has the right to inspect and receive a copy of the personnel records
15 that the employer maintains relating to the employee's performance or to any grievance concerning
16 the employee. Under this statute, upon written request from a current or former employee or his or
17 her representative, an employer must make the contents of those personnel records available for
18 inspection or provide a copy of the personnel records to the current or former employee, or his or
19 her representative, not later than thirty calendar days from the date the employer receives the
20 written request, subject to some limited exceptions. Failure to comply with these requests allows
21 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
22 226(f).

23 129. Plaintiff sent written requests through his counsel to Defendants for their payroll
24 records, timecards, and personnel records on February 10, 2023. However, Plaintiff has not
25 received all of his requested records as of the date of this Complaint.

26 130. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
27 produce the required records requested by Plaintiff.

28 131. On information and belief, Defendants' failure to provide Plaintiff with all of his

1 requested employment records is not an isolated incident, but was instead consistent with
2 Defendants' policy and practice that applied to Plaintiff and Employees.

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

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

8 **ELEVENTH CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**
10 **(Against All Defendants)**

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

13 135. Plaintiff is informed and believes and based thereon alleges that throughout the
14 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work
15 related expenses they incurred. Defendants required Plaintiff and the Class Members to use their
16 cellular phones to communicate with Defendants' managers regarding work-related matters and to
17 pay for their own uniform, tools, equipment and safety gear, as addressed above. Plaintiff and the
18 Class Members must be reimbursed for these necessary business expenses under Labor Code §
19 2802 and Defendants systematically failed to do so.

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

24 137. Defendants' knowing and willful failure to reimburse lawful necessary work related
25 expenses and losses to Plaintiff and the Class Members resulted in damages because, among other
26 things, Defendants did not inform employees of their right to be reimbursed for those work related
27 expenses. As Defendants failed to inform and misled Plaintiff and the Class Members with regard
28 to their rights, Plaintiff and the Class Members were led to believe that incurring those lawful and

1 necessary expenses was an expected and essential function of their employment with Defendants
2 and that failure to incur those expenses would have adverse consequences on their employment.

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

9 **TWELFTH CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

18 140. Plaintiff is a "person" within the meaning of Business & Professions Code
19 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
20 injunctive relief, restitution, and other appropriate equitable relief.

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

1 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

28 147. As a proximate result of the above-mentioned acts of Defendants, Employees have

1 been damaged, in a sum to be proven at trial.

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

9 **THIRTEENTH CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

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

25 152. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
26 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
27 including the penalty provisions, without limitation, based, inter alia, on the following California
28 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,

1 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

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

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

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

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

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

7 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
8 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
9 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
10 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
11 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
12 § 2699(g)(1);

13 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
14 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
15 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
16 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
17 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
18 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
19 pursuant to Labor Code § 2699(g)(1);

20 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code
21 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
22 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
23 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
24 paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to
25 Labor Code § 2699(g)(1).

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

28 (a) Any employer or other person acting on behalf of an employer who violates, or

1 causes to be violated, a section of this chapter or any provision regulating hours and days of work
2 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
3 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
4 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages...

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

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

10 155. Plaintiff has exhausted his administrative remedies by submitting a certified letter
11 to the LWDA and Defendants on November 17, 2023 (LWDA-CM-995092-23) addressing in
12 detail the specific provisions of the Labor Code Defendants have violated and addressing the
13 facts and legal theories to support the alleged violations and requested penalties. The LWDA has
14 not provided notice of its intent to investigate the alleged violations within 65 calendar days of
15 the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for
16 the violations addressed herein and in the PAGA Notice letter and the original Complaint.

17 **RELIEF REQUESTED**

18 WHEREFORE, Plaintiff prays for the following relief:

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

1 years prior to the filing of this action, as may be proven;

2 6. For compensatory damages in the amount of the hourly wage made by Employees
3 for each day requisite rest breaks were not provided or were deficiently provided where no
4 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
5 be proven;

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

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

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

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

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

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

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

17 14. For restitution for unfair competition pursuant to Business & Professions Code
18 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

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

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

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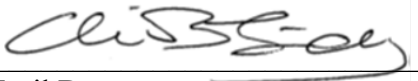
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- 1 20. For an award of pre-judgment and post-judgment interest;
2 21. For an award providing for the payment of the costs of this suit;
3 22. For an award of attorneys' fees; and
4 23. For such other and further relief as this Court may deem proper and just.

5
6 DATED: January 22, 2024

D.LAW, INC.

7
8 By



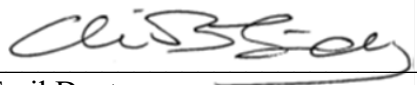
Emil Davtyan
David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff KYLE CHASE
and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: January 22, 2024

D.LAW, INC.

By 
Emil Davtyan
David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff KYLE CHASE
and all others similarly situated

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

Stacey Cooper
stacey@cooperlawpc.com
Cooper Law, P.C
 888 Prospect St Ste 200,
 La Jolla, CA 92037-4261

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

Executed on January 22, 2024, at Glendale, California.

Sasha Zambrano