

Second Amended
Class Action Complaint

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on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

AKOP CHOLAKIAN, an individual,
AALYAH ARCE, an individual, on behalf of
themselves and others similarly situated,

Plaintiffs,

vs.

GERBER COLLISION CALIFORNIA, INC.
a Delaware corporation dba GERBER
COLLISION & GLASS; BOYD GROUP
SERVICES, INC., a foreign corporation dba
THE BOYD GROUP; THE BOYD GROUP
(US) INC., a Delaware corporation; THE
GERBER GROUP, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23STCV27746

CLASS ACTION

Assigned for All Purposes To:

Hon. Kenneth R. Freeman

Dept.: 14

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break Liability under Labor Code § 226.7;
5. Failure to Pay Reporting Time Under 8 CCR § 11090(5);
6. Violation of Labor Code § 226(a) and 226.2;
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
12. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
13. Violation of Business & Professions Code § 17200 *et seq.*; and
14. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: November 13, 2023

FAC filed: January 17, 2024

1 Plaintiffs AKOP CHOLAKIAN and AALYAH ARCE (hereinafter “Plaintiffs”), on behalf
2 of themselves and all other similarly situated non-exempt, hourly and/or piece-rate or commission
3 employees employed by Defendants in California during the relevant period (collectively,
4 “Employees”; individually, “Employee”) complains of Defendants as follows:

5 INTRODUCTION

6 1. Plaintiffs bring this action on behalf of themselves and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly and/or piece-rate or commission employees
9 by Defendants GERBER COLLISION CALIFORNIA, INC. a Delaware corporation dba
10 GERBER COLLISION & GLASS, BOYD GROUP SERVICES, INC., dba THE BOYD GROUP,
11 a business organization whose form is unknown, THE BOYD GROUP (US) INC., a Delaware
12 corporation, THE GERBER GROUP, INC., a Delaware corporation; and DOES 1 through 50 (all
13 defendants being collectively referred to herein as “Defendants”). Plaintiffs allege that Defendants
14 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
15 Commission (IWC), and California Business & Professions Code, and seeks redress for these
16 violations.

17 2. Plaintiff CHOLAKIAN worked as an hourly and/or piece-rate or commission
18 “Auto Body Technician” at one of Defendants’ facilities and locations in Santa Clarita, California
19 and Los Angeles County. Plaintiff ARCE worked as a paint prepper and customer service
20 representative at Defendants’ Valencia, California facility. They and the other Class members
21 were employed by Defendants as non-exempt, hourly and/or piece-rate or commission auto body
22 repair employees at Defendants’ locations and facilities throughout California, including in
23 positions related to providing auto collision repair services to Defendants’ customers. Plaintiffs
24 worked at Defendants’ behest without being paid all wages due and without being provided all
25 required breaks. More specifically, Plaintiffs and the other similarly situated Class members were
26 employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected
27 to the same policies and practices (3) and endured similar violations at the hands of Defendants as
28 the other Employees who served in similar and related positions.

1 3. Defendants required Plaintiffs and the Employees in the Class to work off the clock
2 and failed to record accurate time worked by these Employees, failed to pay them at the
3 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
4 resignation, and provided Plaintiffs and the Class members with inaccurate wage statements that
5 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
6 Plaintiffs and the Class with lawful meal and rest periods, as Employees were required to remain
7 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
8 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
9 applicable paragraphs of the IWC Wage Orders.

10 4. Defendant GERBER COLLISION CALIFORNIA, INC. is a Delaware corporation
11 which upon information and belief is also referred to as dba GERBER COLLISION & GLASS
12 ("Gerber Collision") and which lists its principal address with the California Secretary of State in
13 Elmhurst, Illinois. It lists several personnel as registered corporate agents from a Glendale,
14 California office. It lists its type of business as "AUTO BODY REPAIR." Defendant Gerber
15 Collision is listed as the employer on the wage statements issued to Plaintiffs by Defendants on a
16 bi-weekly and weekly basis, and upon information and belief to other Class members, with the
17 same Illinois address. Upon information and belief, Gerber Collision is either a joint employer
18 with Defendant BOYD GROUP SERVICES, INC. dba THE BOYD GROUP or is a subsidiary of
19 BOYD GROUP SERVICES, INC. dba THE BOYD GROUP. Upon information and belief,
20 Gerber Collision operates various automotive shops and facilities, including the Santa Clarita and
21 Valencia California, facilities where Plaintiffs worked. On information and belief, Gerber
22 Collision maintains operations and locations throughout Los Angeles County and California. The
23 website for Gerber Collision states: "For over 80 years, vehicle owners have trusted their auto
24 collision repairs to Gerber Collision & Glass. Quality workmanship backed by our National
25 Lifetime Guarantee and outstanding customer service are just a few reasons why our customers
26 choose to get it to Gerber."

27 5. Defendant BOYD GROUP SERVICES, INC., a foreign corporation dba THE
28 BOYD GROUP ("THE BOYD GROUP") is unlisted with the California Secretary of State. THE

1 BOYD GROUP's company logo appeared on Plaintiffs' and upon information and belief other
2 Class members' wage statements and other employment documents. The employee handbook
3 provided to Plaintiffs and upon information and belief other Class members states Employees may
4 contact THE BOYD GROUP at their "home office" located in Winnipeg, Manitoba, Canada.
5 Upon information and belief, THE BOYD GROUP is a joint employer with or is a parent
6 company or subsidiary of Defendant GERBER COLLISION CALIFORNIA, INC. dba GERBER
7 COLLISION & GLASS. The website for THE BOYD GROUP states: "Boyd Group Services Inc.
8 ("BGSI") is a Canadian corporation and controls the Boyd Group Inc. and its subsidiaries. BGSI
9 shares trade on the Toronto Stock Exchange under the symbol BYD.TO. The Boyd Group Inc.
10 (the "Company") is one of the largest operators of non-franchised collision repair centers in North
11 America in terms of number of locations and sales. The Company currently operates locations in
12 Canada under the trade names Boyd Autobody & Glass and Assured Automotive, as well as in the
13 U.S. under the trade name Gerber Collision & Glass. In addition, the Company is a major retail
14 auto glass operator in the U.S. with operations under the trade names Gerber Collision & Glass,
15 Glass America, Auto Glass Service, Auto Glass Authority and Autoglassonly.com.

16 6. Defendant THE BOYD GROUP (US), INC., (hereafter "BOYD US") is a
17 Delaware corporation unlisted with the California Secretary of State. BOYD US's company name
18 appeared on Plaintiff ARCE's final wage statement, and upon information and belief other Class
19 members' wage statements and other employment documents. Upon information and belief,
20 BOYD US is a joint employer with or is a parent company of Defendant GERBER COLLISION
21 CALIFORNIA, INC. dba GERBER COLLISION & GLASS, and is a subsidiary of THE BOYD
22 GROUP. The website for THE BOYD GROUP states: "Boyd Group Services Inc. ("BGSI") is a
23 Canadian corporation and controls the Boyd Group Inc. and its subsidiaries."

24 7. Defendant THE GERBER GROUP, INC., (hereafter "GERBER GROUP") is a
25 Delaware corporation unlisted with the California Secretary of State. GERBER GROUP's
26 company name appeared on Plaintiff ARCE's final wage statement, and upon information and
27 belief other Class members' wage statements and other employment documents. Upon
28 information and belief, GERBER GROUP is a joint employer with or is a parent company or

1 subsidiary of Defendant GERBER COLLISION CALIFORNIA, INC. dba GERBER COLLISION
2 & GLASS and/or THE BOYD GROUP.

3 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
5 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
6 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
7 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
8 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
9 County, where Defendants operate and provide auto body repair services to California customers.

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

18 10. Plaintiffs are informed and believe and thereon allege that each Defendant acted in
19 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
20 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
21 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
22 all respects as the employers or joint employers of Employees. Defendants, and each of them,
23 exercised control over the wages, hours or working conditions of Employees, created and
24 implemented the policies and practices that governed the employment of Plaintiffs and the Class
25 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
26 Plaintiffs and the other Employee Class members to work, or engaged, thereby creating a common
27 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
28 of them, employed or jointly employed the Employee Class members.

1 **FACTUAL BACKGROUND**

2 11. The Employees who comprise the Class, including Plaintiffs, are non-exempt
3 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
4 Commission ("IWC"). During the period of four years prior to the filing of this action through its
5 resolution, Plaintiffs and the Class members were either not paid by Defendants for all hours
6 worked or piece rate units or commission wages earned or were not paid at the appropriate
7 minimum, regular and overtime rates, including for meal period and rest break premium
8 payments. Plaintiffs also contend that Defendants failed to pay Plaintiffs and the Class members
9 all wages due and owing, including by miscalculating wages owed and by requiring off the clock
10 work, failing to provide meal and rest breaks, and failing to furnish accurate wage statements and
11 timely pay all wages owed, all in violation of various provisions of the California Labor Code and
12 applicable paragraphs of the IWC Wage Orders.

13 12. During the course of Plaintiffs and the Class members' employment with
14 Defendants they were not paid all wages they were owed, including for all work performed
15 (resulting in "off the clock" work), piece rate units or commissions earned, and for all their
16 overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and
17 ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon
18 information and belief, Defendants employ other non-exempt, hourly and/or piece rate or
19 commission auto body repair employees based out of Defendants' facilities in California.

20 13. Plaintiff CHOLAKIAN worked as an "Auto Body Technician" at one of
21 Defendants' automotive shops and offices in Santa Clarita, California. His duties included
22 disassembling and reassembling vehicles, developing repair plans, and repairing collision-
23 damaged vehicles. Plaintiff CHOLAKIAN generally worked 40 hours per week, five shifts per
24 week. His scheduled hours were generally from 8:00 a.m. through 5:00 p.m. Plaintiff
25 CHOLAKIAN was required to, and did supply his own tools for performing his duties. Plaintiff
26 ARCE worked as a paint prepper and customer service representative at Defendants' Valencia,
27 California facility. Her duties included preparing vehicles for paint, and assisting customers.
28 Plaintiff ARCE generally worked 40 hours per week, five shifts per week. Her scheduled hours

1 were generally from 8:00 a.m. through 5:00 p.m. As part of Defendants' compensation scheme,
2 Plaintiff CHOLAKIAN and Class members would receive nondiscretionary bonuses, in addition
3 to their wages. These bonuses were part of an incentive plan designed to reward Employees for
4 their productivity.

5 14. For approximately half of Plaintiff CHOLAKIAN's employment with Defendants,
6 Defendants utilized a timekeeping system consisting of paper timesheets which required that
7 Employees manually record the start time and end of time of their shifts. Meal periods were also
8 recorded on these timesheets. The timesheets were located in the office of the automotive shop
9 and would require that the office be unlocked for employees to access them. Only certain
10 Employees had keys to unlock the office. Plaintiff CHOLAKIAN did not. Accordingly, on
11 several occasions, Plaintiff and on information and belief other Employees had to wait for the
12 office to be opened to access the timesheets to record the start of their shifts despite the fact they
13 were already under Defendants' control or were otherwise performing work tasks.

14 15. During the latter half of Plaintiff CHOLAKIAN's employment and totality of
15 Plaintiff ARCE's employment, Defendants required that Employees download and use on their
16 personal cell phones a timekeeping application known as "Workforce," which purported to record
17 employees' exact shift start/end time and meal periods. However, this timekeeping system was
18 prone to malfunctioning. At least once per week, Employees were unable to record their time on
19 the Workforce app and were forced to use the only computer available for shop employees to
20 record their entry. If the app on the computer also malfunctioned, Employees were compelled to
21 record their time on paper timesheets. If no timesheets were available, Employees had to verbally
22 communicate their time entries to the manager, who then purported to record them for
23 Employees. On information and belief, the time entries recorded by management were rounded or
24 were otherwise altered to reflect scheduled hours rather than actual hours worked.

25 16. Defendants' faulty timekeeping systems were inaccurate, including because they
26 failed to account for the minutes that Employees spent waiting to record their time. These were
27 minutes that Employees were required to remain under Defendants' control and thus were
28 compensable. However, Defendants did not compensate Employees for these minutes because

1 they were not recorded in their timekeeping systems. Plaintiff ARCE was also not compensated
2 for work performed after clocking out when she had to remain several minutes after to finish her
3 work duties. Accordingly, Defendants failed to pay Employees for all their time worked.

4 17. The failure to maintain accurate timekeeping records perpetrated by Defendants
5 has also been exacerbated by Defendants' other deceptive payroll practices. Plaintiff
6 CHOLAKIAN's wage statements issued to him by Defendants along with his initial employment
7 offer letter identified him as an hourly paid Employee. However, Plaintiff CHOLAKIAN was in
8 fact initially hired and compensated as a piece-rate employee with a guaranteed a minimum of 65
9 piece rate units or "flag hours." Defendants defined flag hours as the pre-designated amount of
10 time a repair order should take. Indeed, Plaintiff's job offer letter states his piece-rate
11 compensation as "\$18.00/flat body, \$22.00/flat frame, \$22.00/flat mechanical to be paid out
12 biweekly." However, upon beginning his employment, Plaintiff CHOLAKIAN was inexplicably
13 paid hourly. Wage statements provided by Defendants to Plaintiff show an hourly "Base Rate" of
14 \$28 per hour, later increased to \$30.00, along with Plaintiff's hours worked for the pay period.
15 The wage statements show Plaintiff CHOLAKIAN's "Basis of Pay" as "Hourly." Confusingly,
16 the wage statements also document "Piece Rate Data" showing the above-referenced rates of pay
17 for body, frame, and mechanical work, plus corresponding hours and earnings. The wage
18 statements also show "R&R" payments with hours that, upon information and belief, possibly
19 correspond to rest and recovery periods. This data suggests that Plaintiff CHOLAKIAN was paid
20 on some sort of a hybrid piece rate and hourly basis, but Defendants neglected to add the
21 "Earnings" attributable to piece rate data to the total earnings paid to Plaintiff. Accordingly, wage
22 statements issued by Defendants do not indicate that Plaintiff CHOLAKIAN was paid piece-rate
23 payments and that piece-rate earnings were not incorporated into overtime and rest and recovery
24 rates of pay or otherwise paid as non-productive time.

25 18. Defendants further confounded the wage statements by making references and
26 payments corresponding to listings for "Flag Bonus," "Unflaggedearns," and "Guarantee Ajd"
27 which are accompanied by no corresponding rate, hours, or formula or other means for
28 understanding how they were calculated. These sporadic payments appear randomly throughout

1 wage statements issued to Plaintiff CHOLAKIAN during his tenure, making it difficult for him to
2 discern the accuracy of his compensation. The only formula documented in the wage statement
3 appears as: “Note: Flag Pool Bonus is the difference between Total Piece Rate Earnings minus
4 (regular pay + (OT Hours + double time hours) x 1.5).” However, even when applying this
5 formula, any purported bonuses were underpaid or otherwise failed to include all forms of
6 remuneration in the rates of pay. Upon information and belief, the Class members were bound by
7 similar misleading and confusing payroll policies and endured similar deceptive wage statement
8 violations at Defendants’ hands as Plaintiff.

9 19. Moreover, to the extent that Defendants purport to have paid Plaintiff
10 CHOLAKIAN commissions instead of on a piece rate basis, Defendants violated Labor Code §
11 2751, which requires that whenever an employer agrees to pay commissions to an employee, the
12 agreement shall be in writing, shall set forth the method by which the commissions shall be
13 computed and paid, and the employer shall give a signed copy to every employee. Defendants’
14 Employee Handbook references commissions as follows: “Commission employees are paid in
15 relation to either sales or production, depending on their role. Flat Rate Technicians are referred
16 to as Commission employees in this Handbook, and they receive a fixed amount for each flat rate
17 hour they complete.” As described above, Plaintiff CHOLAKIAN’s job offer letter states his
18 compensation as piece rate, but to the extent Defendants purport this to be a contract under
19 section 2751, the letter was never signed, and on information and belief, Defendants did not
20 obtain a signed receipt for the contract from Plaintiff. Thus, the letter does not meet section
21 2751’s requirements.

22 20. Defendants’ pay practices have resulted in a compensation system where auto
23 repair employees are supposed to be paid commissions, piece rate units, or flag hours assigned to
24 a particular repair order either separately or in combination with hourly pay. Nevertheless, if
25 Employees are not paid commissions or flag hours during a pay period, Defendants are required
26 to pay them at least the minimum wage level for all their hours worked. Because Plaintiff
27 CHOLAKIAN was required to provide his own tools, this required the minimum wage
28 Defendants must pay under the applicable Wage Order to be twice the minimum wage. However,

1 on information and belief, rather than pay employees for their minimum commissions or flag
2 hours, Defendants set up a pay system that underpaid commissions or flag hours so that the
3 Employees in the Class would have to rely on being paid minimum wages for hours worked
4 during the pay period. To that end, upon information and belief, Defendants would under record
5 or round down piece rate units earned that resulted in recording less hours worked than were in
6 actuality. To the extent Plaintiff CHOLAKIAN was paid on a piece rate basis, Defendants failed
7 to pay him for all pieces completed or else failed to pay for non-productive time or rest break
8 time as required under the Labor Code and Wage Orders. These underpayments or failure to pay
9 wages resulted from uniformly applied company policies and practices which, upon information
10 and belief, also applied to the other Employee Class members.

11 21. Thus, as a matter of uniform company policy, Plaintiff and the Class members
12 were underpaid for their hours worked and piece rate units or commissions earned. Wage
13 statements issued to Plaintiff CHOLAKIAN further evidence that even the time that was recorded
14 and compensated by Defendants was paid at an incorrect rate of pay, as they failed to include and
15 incorporate piece-rate payments or commissions or non-discretionary performance-based bonuses
16 and other forms of remuneration in the regular, overtime, rest and recovery rates of pay.

17 22. Plaintiffs and the Class members were also not paid appropriate wages for the time
18 required to comply with other requirements imposed upon them, which they had to complete
19 while off-duty and without compensation. Plaintiffs and the Class members were sometimes
20 asked to work shifts over eight (8) hours in a day and to work over forty (40) hours in a work
21 week, but they were not paid at the appropriate overtime rate for all such hours, including by
22 being required to perform work duties and tasks without pay and while off-the-clock, and
23 Defendants miscalculated and underpaid overtime by failing to account for piece-rate pay or
24 commissions, bonuses and other forms of remuneration in the regular rate used to calculate
25 overtime payments. As a result, Plaintiffs and the Class members worked overtime hours during
26 their employment with Defendants for which they were not compensated, in violation of the
27 California Labor Code.

28

1 23. When the Employees in the Class did work overtime, they were not compensated
2 at the required and correct rate because Defendants failed to incorporate piece-rate pay or
3 commissions, bonuses and other forms of remuneration they received into the regular rate of pay
4 used to calculate and pay overtime. More specifically, during each pay period, Employees in the
5 Class were paid piece-rate or commissions and bonuses that were non-discretionary and were tied
6 directly to the number of flag hours or commissions they earned. However, contrary to the
7 requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not
8 incorporate the piece rate or commissions, bonuses, and other forms of remuneration they paid to
9 the Employees in the Class into the regular rate of pay Defendants used to calculate and pay
10 overtime to Plaintiffs and the members of the Class.

11 24. Defendants did this, upon information and belief, in connection with other
12 Employees in a concerted effort to underpay wages to Plaintiffs and the other Class members.
13 Employees were therefore not paid for all their hours worked at the required minimum, overtime
14 and double time wage rates due to Defendants' policy and practice of requiring work off the
15 clock and without pay or failing to pay for all hours worked at the correct rates of pay. With work
16 shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in
17 Plaintiffs and the Class members working past eight hours on a shift, which required that they be
18 paid at the correct overtime rate of 1.5 times their regular rate. Defendants thus systematically
19 underpaid Plaintiffs and the Class members by failing to pay them at the required overtime rates
20 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
21 day at the required double time rate. Upon information and belief, the Class members were bound
22 by similar scheduling and work policies which Defendants required them to follow and endured
23 similar violations at Defendants' hands as Plaintiffs.

24 25. Defendants also failed to pay reporting time pay to Plaintiffs and Class members.
25 It was common practice for Employees to arrive at the facilities and then, after two hours of
26 working, to be sent home by their supervisors. Defendants failed to pay Employees for half of
27 their usual or scheduled day's work or four hours at the correct pay rate.

28 26. Defendants have either failed to maintain timekeeping records, piece-rate unit

1 records and/or commission records for Plaintiffs that would permit Plaintiffs to discover the
2 nature and extent of the underpayment of wages, the off the clock work Defendants required, and
3 the actual hours worked and piece rate units or commissions Plaintiffs earned, or have otherwise
4 declined to produce them to Plaintiffs in response to a timely and lawful request. By failing to
5 pay for all hours worked, flag hours, and/or commissions earned, Defendants have committed
6 knowing and intentional ongoing violations of the record keeping requirements under the Labor
7 Code §§ 226 and 1174.

8 27. As a result of the above-described unlawful requirements to work off the clock, to
9 work without payment of all piece rate or commission earnings, and the failure to accurately
10 record all hours worked and unlawful rounding, and the other wage violations they endured at
11 Defendants' hands, Plaintiffs and the Class members were not properly paid all wages earned and
12 all wages owed to them by Defendants, including when working more than eight hours in any
13 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
14 policies and practices, Plaintiffs and Class members incurred overtime hours worked for which
15 they were not adequately and completely compensated, in addition to the hours they were
16 required to work off the clock at their regular rates.

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

27 29. Therefore, from at least four years prior to the filing of this lawsuit and continuing
28 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all

1 hours worked, piece rate units or commissions earned, and failing to pay minimum wages as
2 required by California law. Also, from at least four years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees overtime compensation at premium overtime rates for all hours worked in excess of
5 eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess
6 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC
7 Wage Orders. To the extent Defendants paid Plaintiffs and the Class members were paid piece-
8 rate or commissions, incentive bonuses, and other forms of remuneration above and beyond their
9 normal rate of pay upon information and belief Defendants miscalculated and therefore underpaid
10 any overtime they paid during these pay periods by failing to include all forms of remuneration in
11 the regular rate used to calculate and pay overtime.

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

20 31. More specifically, Plaintiffs worked shifts that entitled them to at least one meal
21 period, but Defendants' managers required Plaintiffs and the Class members to prioritize work
22 over taking proper meal periods. In fact, Defendants made no effort to even schedule or otherwise
23 account for time for Plaintiffs and the Class members to use for duty-free, net thirty minute meal
24 periods. To the extent Defendants required Plaintiffs to work over ten hours on a work shift,
25 Defendants also failed to provide second meal periods and Defendants have produced no evidence
26 of premium wage payments for meal period violations under Labor Code 226.7. To the extent
27 Defendants have paid any such premiums, upon information and belief they failed to include all
28 forms of remuneration, including piece-rate pay, commissions, and bonuses in the regular rate at

1 which Defendants paid the premiums.

2 32. Therefore, meal period violations systematically occurred throughout all of
3 Plaintiffs' work shifts as Defendants failed to provide a lawful meal period or penalty payment. To
4 the extent Defendants ever did pay Plaintiffs a meal period premium, they failed to include all
5 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
6 premium payment. Upon information and belief, the other Class members were subjected to
7 similar unlawful policies and practices and endured similar violations as Plaintiffs.

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

17 34. Defendants appear to recognize and accept their unlawful policies, as Plaintiffs'
18 wage statements evidence Defendant paying meal period premium payments under Labor Code §
19 226.7 to Plaintiffs. As addressed above, Defendants committed similar and ongoing violations by
20 failing to include all forms of remuneration, including piece rate pay, commissions, and bonuses
21 in the regular hourly rate at which they paid the premiums to Plaintiffs and Class members.

22 35. Defendants thus followed uniformly applied policies of not providing all required
23 meal periods to their Employees. Meal periods were often not properly provided, as work
24 demands impermissibly shortened their breaks. Even when Plaintiffs and the Class members were
25 able to take a meal period, it was generally interrupted by work duties or was taken after the fifth
26 hour of work. Additionally, as addressed above, Defendants followed a practice of requiring off
27 the clock work in a manner that would impact when Employees were to receive meal periods and
28 rest breaks, thus leading to further violations.

1 36. As a result, Defendants' failure to provide Plaintiffs and the Class members with all
2 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
3 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
4 least four years prior to the filing of this action and through to the present, Plaintiffs and the Class
5 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
6 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
7 policies and practices. On the occasions when Plaintiffs and the Class members were provided
8 with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
9 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
10 occurred in one or more of the following manners:

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

26 37. Similar violations resulted from Defendants' failure to authorize and permit
27 Plaintiffs and the Class members to take duty-free, net ten-minute rest breaks for every four hours
28 of shift work, or major fraction thereof. Plaintiffs and the other similarly situated Class members

1 were either not authorized permitted the opportunity to take a rest break, or were required to
2 remain under Defendants' control and respond to instructions from management and job demands
3 if and when they even attempted to take one. Upon information and belief, Defendants thus also
4 failed to authorize and permit employees to leave the premises during rest breaks, evidencing
5 Defendants' policy and practice of requiring Plaintiffs and the Class members to remain under
6 their control during required off-duty rest break times.

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

20 39. Defendants also failed to provide Employees with any cooldown periods to
21 prevent heat illness in violation of Labor Code § 226.7. On information and belief, Defendants
22 failed to maintain reasonable temperatures throughout Defendants' work sites and did not provide
23 Employees with any cooldown periods as a respite from the high repair shop temperatures.
24 Additionally, to the extent Defendants compensated Plaintiffs on a piece rate basis, they failed to
25 properly record and compensate them and other Class members for their time taking rest breaks
26 or for other non-productive time when there were unable to generate pieces.

27 40. Defendants' uniformly applied policies and practices thus resulted in untimely and
28 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiffs and the

1 Class members worked shifts of at least eight hours, which required at least two rest breaks, and
2 often worked shifts over ten hours, which required at least three rest breaks. Even on the
3 occasions when Defendants authorized and permitted Plaintiffs to take a first rest break, they
4 were not permitted to take a second or a third break, and those that were provided were often late
5 and generally interrupted by job duties and requirements. Employees were not permitted to take
6 any cooldown periods.

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

- 19 (a) Class members were required to work without being provided a minimum
20 ten minute rest period for every four hours or major fraction thereof worked
21 and were not compensated one hour of pay at their regular rate of
22 compensation for each workday that a rest period was not provided, and to
23 the extent Defendants paid any premiums, they failed to include all forms of
24 remuneration in the regular rate used to calculate and pay them.
- 25 (b) Class members were not authorized and permitted to take timely rest periods
26 for every four hours worked, or major fraction thereof;
- 27 (c) Class members were not authorized and permitted to take any cooldown
28 periods to prevent heat illness; and

1 (d) Class members were required to remain on duty and under Defendants'
2 control during rest periods or otherwise had their rest periods interrupted by
3 work demands.

4 42. From at least four years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
6 deducting the Employees' earned piece rate or commission wages, including by requiring off the
7 clock work during breaks and before and after work shifts and by miscalculating the regular rate
8 and accordingly underpaying overtime wages and meal and rest break premiums. By not
9 compensating Employees for all hours worked, piecer rate work or commissions at the correct
10 rates, Defendants unlawfully deducted wages earned by and owed to Plaintiffs and the Class
11 members, in violation of Labor Code § 221.

12 43. Defendants also violated California Labor Code § 246 by not providing all
13 required paid sick days to Plaintiffs and the similarly aggrieved Employees. Labor Code § 246
14 provides that an Employee who "works in California for the same employer for 30 or more days
15 within a year from the commencement of employment is entitled to paid sick days as specified in
16 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
17 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
18 failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required
19 and earned sick days paid at the correct rate of pay, in violation of Labor Code § 246.
20 Additionally and upon information and belief, Defendants have failed to provide COVID-19
21 supplemental sick leave to the Class members during the relevant time period, including by
22 failing to provide two work weeks of COVID-19 supplemental paid sick leave paid at the correct
23 rates as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as
24 these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days
25 were unlawfully withheld, the dollar amount of paid sick days withheld from the employee
26 multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to
27 exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the
28 administrative penalty." Plaintiffs accordingly seek this relief available for Defendants' failure to

1 provide Employees with all their required and earned sick days and all their COVID-19
2 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and
3 statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558,
4 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
5 Labor Code § 2699(g)(1).

6 44. Defendants also failed to provide suitable seating to Plaintiff CHOLAKIAN and
7 the Class members. When Plaintiff was not on his feet conducting repairs in his assigned car bay,
8 Plaintiff was required to be in a workstation during work hours to complete notes. Throughout his
9 shifts, including when completing notes, Plaintiff would be required to stand in Defendants'
10 workstation on site for long periods. Defendants should have provided Plaintiff with suitable
11 seating at his workstation, such as a chair or a stool or the like, and such seating would in no way
12 have interfered with the performance of Plaintiff's job duties. California Labor Code §1198 makes
13 it illegal to employ an employee under conditions of labor that are prohibited by the applicable
14 Wage Order. By failing to provide Plaintiff and certain Class members with suitable seats in
15 violation of Wage Order 7-2001, § 14, Defendants violated California Labor Code § 1198.
16 Plaintiff has been injured because he was employed by Defendants and was not provided with
17 suitable seating, in violation of Lab. Code § 1198 and Wage Order 7-2001, § 14. He was harmed
18 by Defendants' failure to provide seats because he was required to stand for extended periods of
19 time despite the fact that the nature of his work did not require that he remain standing at all times.

20 45. Upon information and belief, Defendants also failed to provide Employees such as
21 Plaintiffs at the time of their employment and thereafter with written notice complying with all
22 the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an
23 employer shall provide to each employee a written notice, in the language the employer normally
24 uses to communicate employment-related information to the employee, containing" specific
25 required information. Upon information and belief, Defendants failed to provide this information
26 to the Class members as required under Labor Code § 2810.5. Defendants were required to
27 provide Plaintiffs and the aggrieved employee Class members certain specific information upon
28 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiffs with

1 any such information when they were hired, or have failed to produce it, and upon information
2 and belief Defendants committed similar violations in connection with similarly situated and
3 aggrieved Class members.

4 46. As a result of these illegal policies and practices, Defendants also engaged in and
5 enforced the following additional unlawful practices and policies against Plaintiffs and the Class
6 members they seek to represent:

- 7 (e) failing to pay all wages owed to Class members who either were discharged,
8 laid off, or resigned in accordance with the requirements of Labor Code §§
9 201, 202, 203;
- 10 (f) failing to pay all wages owed to the Class members twice monthly in
11 accordance with the requirements of Labor Code § 204;
- 12 (g) failing to pay Class members all wages owed, including all meal and rest
13 period premium wages, and failing to pay them at the regular rate of
14 compensation;
- 15 (h) failing to maintain accurate records of Class members' hours worked and
16 earned wages and meal periods in violation of Labor Code §§ 226 and
17 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 18 (i) failing to produce timekeeping records in response to Plaintiff
19 CHOLAKIAN's timely and lawful request to receive them under these
20 authorities.

21 47. Defendants have also failed to provide Class members with proper wage
22 statements, as required by California wage-and-hour laws. As noted above, wage statements
23 issued by Defendants included payments corresponding to "Flag Bonus," "Unflagged earns," and
24 "Guarantee Ajd" which bear no corresponding rate, hours, or formula as to how they were
25 calculated. These sporadic payments appear randomly throughout wage statements issued to
26 Plaintiff CHOLAKIAN during his tenure and made it difficult for him to discern the accuracy of
27 his compensation.

28 48. Moreover, Defendants have also consistently failed to provide Class members with

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

17 49. Defendants also provided Plaintiffs and the Class members with wage statements
18 that failed to report all hours worked accurately, applicable hourly rates for all hours worked and
19 piece rate units or commissions. For the same reasons as explained above, Plaintiffs and the Class
20 members were provided with unlawful wage statements that failed to reflect all piece rate units or
21 commissions earned, hours worked and failed to pay for all overtime hours or failed to pay
22 overtime wages at the correct overtime premium rate, and Defendants miscalculated meal and rest
23 break premiums, and sick time if and when they did pay them. Defendants followed this unlawful
24 policy and practice even though both Plaintiffs and Defendants were aware that Plaintiffs and the
25 Class members worked more total hours or earned more piece-rate pay or commissions than were
26 reflected on the wage statements, including overtime hours, and were underpaid by regular rate
27 miscalculation. Moreover, any purported separate rest and recovery pay failed to be paid at the
28 correct rate of pay. Plaintiffs and the Employees in the Class were unable to discern from their

1 wage statements alone the actual hours they worked in total during a pay period and the rates they
2 were paid for those hours worked.

3 50. Additionally, California Labor Code § 226.2(a)(1) states that, for “employees
4 compensated on a piece-rate basis during a pay period, . . . Employees shall be compensated for
5 rest and recovery periods and all other nonproductive time separate from any piece-rate
6 compensation.” Defendants failed to do so for Plaintiffs and the Class Members when they were
7 paid on a piece rate basis, including by failing to comply with the other provisions of Labor Code
8 § 226.2 addressing the requirements for compensating employees for rest and recovery periods
9 and other non-productive time separate from piece rate compensation. Employees were paid on a
10 piece rate basis. However, Defendants failed to separately pay Employees for their rest periods
11 and cooldown periods in violation of Labor Code § 226.2 and California minimum wage laws,
12 discussed above.

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

22 52. Defendants also required Plaintiffs and the Class members to work hours off the
23 clock for which they were not compensated. They were required to endure off the clock work
24 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
25 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
26 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
27 work shift and a work day or failed to pay it at the correct rate, as addressed above. Therefore,
28 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to

1 Plaintiffs and other similarly situated Employees at the time of their termination or within seventy-
2 two hours of their resignation, as required by California wage-and-hour laws.

3 53. Additionally, Labor Code § 1198 requires that “. . . the standard conditions of
4 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
5 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”
6 Paragraph 15 of the applicable IWC Wage Orders requires the following regarding the
7 temperatures maintained at employers’ facilities within California: “(A) The temperature
8 maintained in each work area shall provide reasonable comfort consistent with industry-wide
9 standards for the nature of the process and the work performed...” Defendants also violated the
10 Labor Code and Wage Orders by, upon information and belief, failing to maintain reasonable
11 temperatures throughout Defendants’ repair shops and not providing any break areas that were
12 sufficiently cooled. Defendants instead required employees to work in excessively hot work areas
13 and conduct repairs without having respite from the work site temperatures or having a break area
14 where employees could cool down.

15 54. Plaintiff CHOLAKIAN has also requested records from Defendants and they have
16 failed to constructively respond or to fully respond. Therefore, Plaintiff also asserts that
17 Defendants have had a consistent policy of denying Plaintiff and Class members the right to
18 inspect and receive all of their payroll records, timecards, and personnel records.

19 55. Additionally, from at least four years prior to the filing of this lawsuit and
20 continuing to the present, Defendants have regularly required Plaintiffs and the Class members to
21 incur necessary business expenses in the course of performing their required job duties without
22 reimbursement. These included the cell phone-related expenses Plaintiffs incurred in responding to
23 calls from management, the use of their cell phones to record their time entries on the Workforce
24 app, the purchase of protective equipment such as work boots, goggles, face shields, and gloves,
25 the purchase of bathroom supplies such as soap and toilet paper and the purchase of office supplies
26 such as pens and highlighters. Additionally, Plaintiff ARCE was required to pay for maintenance
27 expenses of her work uniform. Plaintiffs and the Class members must be reimbursed for these
28 necessary business expenses under Labor Code § 2802, and Defendants systematically failed to do

1 so.

2 56. In light of the forgoing, Plaintiffs and the Employees in the Class bring this action
3 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.2,
4 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
5 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 *et seq.*, and California Code of
6 Regulations, Title 8, section 11000 *et seq.*

7 57. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
8 Plaintiffs and the Class members seek injunctive relief, restitution, and disgorgement of all
9 benefits Defendants have enjoyed from their violations of Labor Code and the other unfair,
10 unlawful, or fraudulent practices alleged in this Complaint.

11 **CLASS ALLEGATIONS**

12 58. Plaintiffs bring this class action on behalf of themselves and all others similarly
13 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class (or “the
14 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
15 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
16 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
17 hourly or piece-rate or commission employees within the State of California.” This includes all
18 hourly or piece-rate or commission auto body repair employees and those in similar and related
19 positions. Further, Plaintiffs seek to represent the Subclasses composed of and defined as follows:

20 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
21 compensated for all hours worked for Defendants and piece rate units or commissions at the
22 applicable minimum wage.

23 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
24 compensated for all hours worked for Defendants and piece rate units or commissions at the
25 required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a
26 week.

27 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
28 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-

1 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

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

8 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
9 applicable limitations period, were not provided with accurate itemized wage statements including
10 the failure to include separate rest and recovery pay on wage statements.

11 g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members
12 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
13 including by requiring off the clock work and underpaying piece rate units or commissions.

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

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

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

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

27 l. Subclass 12. Expense Reimbursement Subclass. All Class members who incurred
28 necessary and reasonable expenses in connection with performing their job duties for Defendants

1 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

2 m. Subclass 13. UCL Subclass. All Class members who are owed restitution as a
3 result of Defendants' business acts and practices, to the extent such acts and practices are found to
4 be unlawful, deceptive, and/or unfair.

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

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

18 61. This action has been brought and may properly be maintained as a class action
19 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
20 of interest in this litigation and the proposed Class is easily ascertainable from the employment
21 records for Plaintiffs and the Class members that Defendants are required to maintain under
22 California law.

23 **A. Numerosity**

24 62. The potential members of the Class as defined are so numerous that joinder of all
25 the Class members is impracticable. While the precise number of Class member has not been
26 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the
27 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
28 Class definition within the State of California. Plaintiffs allege that Defendants' employment

records will provide information as to the number and location of all Class members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages, including for all hours worked, piece rate units or commissions;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants paid reporting time pay under the applicable wage order and CCR § 11090(5);
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or cooldown periods or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- h. Whether Defendants violated Labor Code § 226.2 by failing to separately compensate Employees paid on a piece rate basis for their rest periods;
- i. Whether Defendants violated Labor Code § 221;
- j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay

wages and compensation due and owing at the time of termination of employment;

k. Whether Defendants' conduct was willful;

l. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;

m. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;

n. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;

o. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;

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

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

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

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

C. Typicality

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

D. Adequacy of Representation

65. Plaintiffs will fairly and adequately represent and protect the interest of the

1 Employee Class members. Counsel who represents Plaintiffs and the Employees in the Class are
2 experienced and competent in litigating employment class actions.

3 **E. Superiority of Class Action**

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

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

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

27 69. Defendants, as prospective and actual employers of the Employees in the Class,
28 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding

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

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

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

17 71. Plaintiffs re-alleges and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 72. Defendants failed to pay Employees minimum wages for all hours worked, piece
20 rate units or commissions earned. Defendants had a consistent policy of failing to pay Employees
21 for all hours worked, piece rate units and/or commissions earned. Employees would work hours,
22 earn piece rate units and/or commissions, and not receive wages, including as alleged above in
23 connection with off the clock work, including all the time required to remain on duty and under
24 Defendants' control during breaks and due to the work demands placed upon them by
25 Defendants' management and by paying what should have been overtime hours as regular hours.
26 Defendants' uniformly applied policies required systematic off the clock work and underpayment
27 of all wages owed to Employees over a period of time, while benefiting Defendants. During the
28 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiffs and

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

8 73. 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 74. 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 75. 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 76. 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 77. Additionally, California Labor Code § 226.2(a)(1) states that, for “employees
3 compensated on a piece-rate basis during a pay period, . . . Employees shall be compensated for
4 rest and recovery periods and all other nonproductive time separate from any piece-rate
5 compensation.” Defendants failed to do so for Plaintiffs and the Class Members when they were
6 paid on a piece rate basis, including by failing to comply with the other provisions of Labor Code
7 § 226.2 addressing the requirements for compensating employees for rest and recovery periods
8 and other non-productive time separate from piece rate compensation. Employees were paid on a
9 piece rate basis. However, Defendants failed to separately pay Employees for their rest periods, at
10 least for the majority of the Class period, in violation of Labor Code § 226.2 and California
11 minimum wage laws, discussed above.

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

21 79. As a direct result of Defendants’ unlawful wage practices as alleged herein,
22 Plaintiffs and the other members of the Class did not receive the correct minimum wage
23 compensation for their time worked for Defendants and for all piece rate units earned, including
24 by not receiving wages for all rest periods and all rest and recovery and non-productive work time
25 when they were paid on a piece rate basis.

26 80. California Labor Code § 1194.2 also provides for the following remedies: “In any
27 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
28 minimum wages fixed by an order of the commission, an employee shall be entitled to recover

liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

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

82. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class members are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

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

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

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 85. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

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

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

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

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

10 90. As a direct result of Defendants' unlawful wage practices as alleged herein, the
11 Plaintiffs and the other members of the Class did not receive the correct wage compensation for
12 their time worked for Defendants and for all piece rate units and/or commissions earned, including
13 by not receiving wages for all rest periods and all rest and recovery and nonproductive work time
14 when they were paid on a piece rate basis. Pursuant to California Labor Code § 1194.2, Plaintiffs
15 and class members are entitled to recover liquidated damages in an amount equal to wages
16 unlawfully unpaid and interest thereon.

17 91. During the Class Period, Plaintiffs and the other members of the Class were paid
18 less for time worked and piece rate units and/or commissions than they were entitled to,
19 constituting a failure to pay all earned wages. By virtue of Defendants' unlawful failure to
20 accurately pay all earned compensation to Plaintiffs and the other members of the Class for the
21 true time they worked and piece rate units and/or commissions they earned, Plaintiffs and the other
22 members of the Class have suffered and will continue to suffer an economic injury in amounts
23 which are presently unknown to them and which will be ascertained according to proof at trial.

24 92. Therefore, Employees were not properly compensated, nor were they paid overtime
25 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
26 Based on information and belief, Defendants did not make available to Employees a reasonable
27 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
28 time or piece rate unit or commission entries or those that Defendants unlawfully under-recorded

1 to the Employee's detriment. Defendants have also violated these provisions by requiring
2 Plaintiffs and other similarly situated Class members to work through meal periods when they
3 were required to be clocked out or to otherwise work off the clock to complete their daily job
4 duties.

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

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

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

96. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission). 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 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or if the employer pays “a wage less than the minimum fixed by an order of the commission” or “violates...any provision of this chapter or any order or ruling of the commission.”

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

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

98. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

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

100. Defendants failed to provide Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required to work or to otherwise remain under Defendants' control during meal periods, or Defendants

1 provided them after Employees worked beyond the fifth hour of their shifts or Employees
2 otherwise had them shortened and interrupted by work demands and requirements to perform off
3 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
4 on the occasions when Employees worked more than ten hours in a given shift, they did so
5 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

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

21 103. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
22 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
23 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
24 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
25 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
26 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)**

4 104. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 105. 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.

9 106. 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 authorize and permit Plaintiffs and the Class members to take lawful rest breaks. Employees
16 were often required to work or to otherwise remain under Defendants' control during rest periods,
17 including by responding to work requirements, and had breaks provided untimely as a result of the
18 above described off the clock work.

19 107. Defendants also failed to provide Employees with any recovery or "cooldown"
20 periods to prevent heat illness in violation of Labor Code § 226.7. On information and belief,
21 Defendants failed to maintain reasonable temperatures throughout Defendants' work sites and did
22 not provide Employees with any cooldown periods as a respite from the high temperatures inside
23 the repair shop.

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

28 109. Defendants, and each of them, have therefore intentionally and improperly denied

1 rest periods to Plaintiffs and the Class members in violation of Labor Code §§ 226.7 and 512 and
2 paragraph 12 of the applicable IWC Wage Orders.

3 110. Defendants failed to authorize and permit Plaintiffs and the Class members to take
4 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
5 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
6 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
7 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
8 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
9 compensation by not including all forms of remuneration in it. Defendants thus failed to
10 compensate the Employees in the Class for each rest period not provided or inadequately
11 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
12 Wage Order.

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY REPORTING TIME PAY UNDER WAGE ORDER 9-2001, 8 CCR §**
20 **11090(5)**

21 **(Against All Defendants)**

22 112. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
23 full herein.

24 113. Wage Order 5-2001 provides that "[e]ach workday an employee is required to report
25 for work and does report, but is not put to work or is furnished less than half said employee's usual
26 or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
27 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate
28 of pay, which shall not be less than the minimum wage." Cal. Code Regs., tit, 8, § 11050(5)(A).

1 114. As set forth herein, Plaintiffs and Employees were required to report for work and
2 were sent home before half of their scheduled days' work. Defendants failed to pay Plaintiffs and
3 Employees for half of their scheduled days' work in violation of the applicable Wage Order.

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

7 116. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
9 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
10 wages, including reporting time pay, with interest, plus their reasonable attorneys' fees and costs,
11 as well as the assessment of any statutory penalties against Defendants, and each of them, and
12 any additional sums as provided by the Labor Code and/or other statutes.

13 **SIXTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226(a) and 226.2**

15 **(Against All Defendants)**

16 117. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
17 full herein.

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

25 119. Defendants failed to provide Plaintiffs and the similarly situated Employee Class
26 members with accurate itemized wage statements in writing, as required by the Labor Code and
27 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
28 Employees by Defendants failed to accurately account for wages, overtime, hours worked, pieces

1 rate units and/or commissions earned, hourly rates and piece rates, and did not provide pay for
2 non-productive time and premium pay for deficient meal periods and rest breaks, all of which
3 Defendants knew or reasonably should have known were owed to Employees, as alleged
4 hereinabove. Moreover, the wage statements Defendants provided to the Employees in the Class
5 failed to list or to accurately list the wage rates or the hours worked at those rates or pieces rate
6 unit and/or commissions earned during the pay period which led to the calculated pay listed by
7 Defendants without any further detail. Wage statements issued by Defendants to Employees
8 reference “Flag Bonus,” “Unflaggedearns,” and “Guarantee Ajd” which bear no corresponding
9 rate, hours, or formula as to how they were calculated. These sporadic payments appear randomly
10 throughout wage statements issued to Plaintiff CHOLAKIAN during his tenure and made it
11 difficult for him to discern the accuracy of his compensation.

12 120. California Labor Code § 226.2(a)(2)(A)-(B) further instructs that: “The itemized
13 statement required by subdivision (a) of Section 226 shall, in addition to the other items specified
14 in that subdivision, separately state the following, to which the provisions of Section 226 shall also
15 be applicable: (A) The total hours of compensable rest and recovery periods, the rate of
16 compensation, and the gross wages paid for those periods during the pay period. (B) Except for
17 employers paying compensation for other nonproductive time in accordance with paragraph (7),
18 the total hours of other nonproductive time, as determined under paragraph (5), the rate of
19 compensation, and the gross wages paid for that time during the pay period.” Defendants failed to
20 issue accurate itemized wage statements to Plaintiffs and the Class Members when they were paid
21 on a piece rate basis because the wage statements failed to comply with the requirements of Labor
22 Code § 226.2, in addition to Labor Code § 226.

23 121. Throughout the liability period, Defendants intentionally failed to furnish to
24 Plaintiffs and the Class members, upon each payment of wages, itemized statements accurately
25 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
26 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
27 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
28 the employee and only the last four digits of his or her social security number or an employee

1 identification number other than a social security number, (8) the name and address of the legal
2 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
4 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
5 requirements. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
6 members with such timely and accurate wage and hour statements.

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

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

1 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
2 IWC Wage Orders.

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

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

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

18 126. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
19 full herein.

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

25 128. Defendants unlawfully received and/or collected wages from the Employees in the
26 Class by understating and underpaying piece rate units and/or commissions, requiring off the
27 clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of
28 compensation for every meal and rest period violation endured by Plaintiffs and the other Class

1 members, as alleged above. By not compensating Employees for all hours worked and meal and
2 rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code §
3 221.

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

6 **EIGHTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 204**
8 **(Against All Defendants)**

9 130. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
10 full herein.

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

25 132. All wages due and owing to Plaintiffs and the Class members, including as required
26 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
27 required by Labor Code § 1194 and other sections became due and payable to each employee in
28 each pay period that he or she was not provided with a meal period or rest period or paid straight

1 or overtime wages to which he or she was entitled.

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

11 134. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
12 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
13 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
14 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
15 applicable IWC Wage Orders.

16 **NINTH CAUSE OF ACTION**
17 **VIOLATION OF LABOR CODE § 203**
18 **(Against All Defendants)**

19 135. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
20 full herein.

21 136. Plaintiffs and numerous Class members are no longer employed by Defendants;
22 they either quit Defendants’ employ or were fired therefrom.

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

25 138. The wages withheld from these Employees by Defendants remained due and owing
26 for more than thirty days from the date of separation from employment.

27 139. Defendants thus failed to pay Plaintiffs and the Class members without abatement,
28 all wages as defined by applicable California law. Among other things, these Employees were not

1 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
2 or requiring off the clock work or by unlawfully under-recording time entries and piecer rate units
3 and/or commission to the detriment of Employees, and Defendants failed to pay premium wages
4 owed for unprovided meal periods and rest periods, as further detailed in this Complaint.
5 Defendants' failure to pay said wages within the required time was willful within the meaning of
6 Labor Code § 203.

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

19 141. Defendants' failure to pay wages, as alleged, entitle Plaintiffs and these former
20 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
21 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
22 shall continue until paid for up to thirty (30) days from the date they were due.

23 TENTH CAUSE OF ACTION

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

25 (Against All Defendants)

26 142. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 143. California Labor Code § 1174 requires that all employers shall keep accurate time

1 and wage records for all employees. California Labor Code § 1174.5 further requires that any
2 employee suffering injury due to a willful violation of the aforementioned obligations may seek
3 damages, including civil penalties, from the employer.

4 144. During the course of Plaintiffs' and Employees' employment, Defendants
5 consistently failed to maintain accurate time, piece rate and/or commissions and wage records for
6 Plaintiffs and Class Members as required by California Labor Code § 1174 by failing to pay them
7 proper wages, overtime, and premium pay as discussed above and failing to document and pay for
8 actual hours worked.

9 145. Defendants are also required by the California Labor Code § 1198 and the
10 applicable Wage Order to maintain a tracking system that accurately records the times during
11 which Employees work.

12 146. Defendants have maintained a common unlawful policy and practice of failing to
13 accurately record all hours worked and all meal period start and end times.

14 147. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
15 knew wages to be due but failed to pay them.

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

18 **ELEVENTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

21 149. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

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

28 151. Pursuant to California Labor Code § 1198.5(a), every current and former employee,

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

10 152. Plaintiff CHOLAKIAN sent written requests through his counsel to Defendants for
11 their payroll records, timecards, and personnel records. However, Plaintiff has not received all of
12 his requested records as of the date of this Complaint.

13 153. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
14 produce the required records requested by Plaintiff.

15 154. On information and belief, Defendants' failure to provide Plaintiff CHOLAKIAN
16 with all of his requested employment records is not an isolated incident, but was instead consistent
17 with Defendants' policy and practice that applied to Plaintiff and Employees.

18 155. Pursuant to California Labor Code § 1198.5, Plaintiffs and Employees are entitled
19 to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

20 156. Pursuant to California Labor Code § 226(f), Plaintiffs are entitled to a penalty of
21 seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other
22 Class members similarly situated are similarly entitled.

23 **TWELFTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**
25 **(Against All Defendants)**

26 157. Plaintiffs reallege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 158. Plaintiffs are informed and believe and based thereon allege that throughout the

1 period applicable, Defendants required Plaintiffs and the Class members to pay for necessary work
2 related expenses they incurred. These included the cell phone-related expenses Plaintiffs incurred
3 in responding to calls from management, the use of their cell phones to record their time entries on
4 the Workforce app, the purchase of protective equipment such as work boots, goggles, face
5 shields, and gloves, and the purchase of bathroom supplies such as soap and toilet paper.
6 Additionally, Plaintiff ARCE was required to pay for maintenance expenses of her work uniform.
7 Plaintiffs and the Class members must be reimbursed for these necessary business expenses under
8 Labor Code § 2802 and Defendants systematically failed to do so.

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

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

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

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28 ///

1 **THIRTEENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 162. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein. Plaintiffs, on behalf of themselves, the Employees in the Class, and the general
6 public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
7 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
8 harmful to Employees and the general public. Plaintiffs seek to enforce important rights affecting
9 the public interest within the meaning of Code of Civil Procedure § 1021.5.

10 163. Plaintiffs are a “person” within the meaning of Business & Professions Code
11 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
12 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

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

1 **FOURTEENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 172. Plaintiffs reallege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

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

17 175. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
18 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
19 including the penalty provisions, without limitation, based, inter alia, on the following California
20 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 246, 248.1, 248.2, 248.5, 510, 512,
21 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5,
22 and 2698 et seq.

23 176. More specifically, after complying with the notice procedures of Labor Code §
24 2699.3, Plaintiffs assert, as a representative action on behalf of the California Attorney General
25 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
26 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
27 including as follows:

28 (a) Wage Claims: For failure to provide Plaintiffs and the Aggrieved Employees all

1 earned regular pay, minimum wages for regular hours worked, piece rate units or commissions
2 earned, and for failure to pay overtime premium wages for overtime hours worked under Labor
3 Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the
4 applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable
5 under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for
6 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

7 (b) Meal, Rest and Recovery Period Claims: For failure to provide Plaintiffs and the
8 Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and
9 permit them to take off-duty, timely, and paid rest and recovery periods, or pay one hour of regular
10 pay in lieu thereof, under Labor Code §§ 512, 1198, 226.2, and 226.7, and Sections 11, 12(A), and
11 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
12 applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under
13 Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for
14 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

15 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
16 Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements and failure to
17 maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226,
18 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
19 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
20 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
21 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
22 providing inaccurate wage statements and failing to maintain records as required under Labor
23 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
24 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
25 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
26 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
27 citation, ...";

28 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at

1 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
2 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§
3 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC
4 Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

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

23 (h) Failure to Pay Reporting Time Pay: For Defendants failure to provide Employees
24 with all their required reporting time pay in violation of Wage Order 9-2001 and 8 § CCR
25 11090(5) and civil and statutory penalties available and applicable under Labor Code §§ 204, 558,
26 including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and
27 costs pursuant to Labor Code § 2699(g)(1);

28 (i) Failure to Provide Suitable Seating: For the above addressed violations of

paragraph 14 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and the civil and statutory penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

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

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

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

which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (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...

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare 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.

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

178. Plaintiffs have exhausted their administrative remedies by submitting a certified letter to the LWDA and Defendants on November 13, 2023 and an amended PAGA Notice on June 24, 2024 (LWDA-CM-993924-23) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate

1 the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiffs adds
2 this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA
3 Notice letter and the original Complaint.

4 **RELIEF REQUESTED**

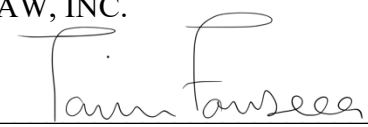
5 WHEREFORE, Plaintiffs pray for the following relief:

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

12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
17. For penalties under Labor Code § 558, as may be proven;
18. For other wages and penalties under the Labor Code as may be proven;
19. For all general, special, and incidental damages as may be proven;
20. For an award of pre-judgment and post-judgment interest;
21. For an award providing for the payment of the costs of this suit;
22. For an award of attorneys' fees; and
23. For such other and further relief as this Court may deem proper and just.

DATED: June 24, 2024

D.LAW, INC.

By: 

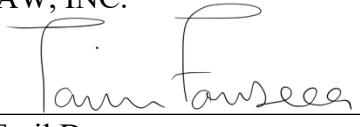
Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiffs Akop Cholakian,
Aalyah Arce and the putative class

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: June 24, 2024

D.LAW, INC.

By: 

Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiffs, Akop Cholakian,
Aalyah Arce and the putative class