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Attorneys for Plaintiff AKOP CHOLAKIAN
on behalf of himself and all others similarly situated

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

AKOP CHOLAKIAN, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

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

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

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.*

DEMAND FOR JURY TRIAL

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

5 **INTRODUCTION**

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

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

26 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
27 and failed to record accurate time worked by these Employees, failed to pay them at the
28 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or

1 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
2 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
3 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
4 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
5 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
6 applicable paragraphs of the IWC Wage Orders.

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

23 5. Defendant BOYD GROUP SERVICES, INC., a foreign corporation dba THE
24 BOYD GROUP ("THE BOYD GROUP") is unlisted with the California Secretary of State. THE
25 BOYD GROUP's company logo appeared on Plaintiff's and upon information and belief other
26 Class members' wage statements and other employment documents. The employee handbook
27 provided to Plaintiff and upon information and belief other Class members states Employees may
28 contact THE BOYD GROUP at their "home office" located in Winnipeg, Manitoba, Canada.

1 Upon information and belief, THE BOYD GROUP is a joint employer with or is a parent
2 company or subsidiary of Defendant GERBER COLLISION CALIFORNIA, INC. dba GERBER
3 COLLISION & GLASS. The website for THE BOYD GROUP states: “Boyd Group Services Inc.
4 (“BGSI”) is a Canadian corporation and controls the Boyd Group Inc. and its subsidiaries. BGSI
5 shares trade on the Toronto Stock Exchange under the symbol BYD.TO. The Boyd Group Inc.
6 (the “Company”) is one of the largest operators of non-franchised collision repair centers in North
7 America in terms of number of locations and sales. The Company currently operates locations in
8 Canada under the trade names Boyd Autobody & Glass and Assured Automotive, as well as in the
9 U.S. under the trade name Gerber Collision & Glass. In addition, the Company is a major retail
10 auto glass operator in the U.S. with operations under the trade names Gerber Collision & Glass,
11 Glass America, Auto Glass Service, Auto Glass Authority and Autoglassonly.com.

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

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

27 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

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

10 **FACTUAL BACKGROUND**

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

22 10. During the course of Plaintiff and the Class members’ employment with
23 Defendants they were not paid all wages they were owed, including for all work performed
24 (resulting in “off the clock” work), piece rate units or commissions earned, and for all their
25 overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and
26 ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon
27 information and belief, Defendants employ other non-exempt, hourly and/or piece rate or
28 commission auto body repair employees based out of Defendants’ facilities in California.

1 11. Plaintiff worked as an “Auto Body Technician” at one of Defendants’ automotive
2 shops and offices in Santa Clarita, California. His duties included disassembling and
3 reassembling vehicles, developing repair plans, and repairing collision-damaged vehicles.
4 Plaintiff generally worked 40 hours per week, five shifts per week. Plaintiff’s scheduled hours
5 were generally from 8:00 a.m. through 5:00 p.m. Plaintiff was required to, and did supply his
6 own tools for performing his duties. As part of Defendants’ compensation scheme, Plaintiff and
7 Class members would receive nondiscretionary bonuses, in addition to their wages. These
8 bonuses were part of an incentive plan designed to reward Employees for their productivity.

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

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

1 14. Defendants' faulty timekeeping systems were inaccurate, including because they
2 failed to account for the minutes that Employees spent waiting to record their time. These were
3 minutes that Employees were required to remain under Defendants' control and thus were
4 compensable. However, Defendants did not compensate Employees for these minutes because
5 they were not recorded in their timekeeping systems. Accordingly, Defendants failed to pay
6 Employees for all their time worked.

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

27 16. Defendants further confounded the wage statements by making references and
28 payments corresponding to listings for "Flag Bonus," "Unflaggedearns," and "Guarantee Ajd"

1 which are accompanied by no corresponding rate, hours, or formula or other means for
2 understanding how they were calculated. These sporadic payments appear randomly throughout
3 wage statements issued to Plaintiff during his tenure, making it difficult for him to discern the
4 accuracy of his compensation. The only formula documented in the wage statement appears as:
5 “Note: Flag Pool Bonus is the difference between Total Piece Rate Earnings minus (regular pay +
6 (OT Hours + double time hours) x 1.5).” However, even when applying this formula, any
7 purported bonuses were underpaid or otherwise failed to include all forms of remuneration in the
8 rates of pay. Upon information and belief, the Class members were bound by similar misleading
9 and confusing payroll policies and endured similar deceptive wage statement violations at
10 Defendants’ hands as Plaintiff.

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

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

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

11 19. 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 further evidence that even the time that was recorded and
14 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 20. Plaintiff 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. Plaintiff and the Class members were sometimes asked
20 to work shifts over eight (8) hours in a day and to work over forty (40) hours in a work week, but
21 they were not paid at the appropriate overtime rate for all such hours, including by being required
22 to perform work duties and tasks without pay and while off-the-clock, and Defendants
23 miscalculated and underpaid overtime by failing to account for piece-rate pay or commissions,
24 bonuses and other forms of remuneration in the regular rate used to calculate overtime payments.
25 As a result, Plaintiff and the Class members worked overtime hours during their employment
26 with Defendants for which they were not compensated, in violation of the California Labor Code.

27 21. When the Employees in the Class did work overtime, they were not compensated
28 at the required and correct rate because Defendants failed to incorporate piece-rate pay or

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

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

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

26 24. Defendants have either failed to maintain timekeeping records, piece-rate unit
27 records and/or commission records for Plaintiff that would permit Plaintiff to discover the nature
28 and extent of the underpayment of wages, the off the clock work Defendants required, and the

1 actual hours worked and piece rate units or commissions Plaintiff earned, or have otherwise
2 declined to produce them to Plaintiff in response to a timely and lawful request. By failing to pay
3 for all hours worked, flag hours, and/or commissions earned, Defendants have committed
4 knowing and intentional ongoing violations of the record keeping requirements under the Labor
5 Code §§ 226 and 1174.

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

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

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

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

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

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

28 30. Therefore, meal period violations systematically occurred throughout all of

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

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

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

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

27 34. As a result, Defendants' failure to provide Plaintiff and the Class members with all
28 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest

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

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

24 35. Similar violations resulted from Defendants' failure to authorize and permit
25 Plaintiff and the Class members to take duty-free, net ten-minute rest breaks for every four hours
26 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
27 were either not authorized permitted the opportunity to take a rest break, or were required to
28 remain under Defendants' control and respond to instructions from management and job demands

1 if and when they even attempted to take one. Upon information and belief, Defendants thus also
2 failed to authorize and permit employees to leave the premises during rest breaks, evidencing
3 Defendants' policy and practice of requiring Plaintiff and the Class members to remain under
4 their control during required off-duty rest break times.

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

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

25 38. Defendants' uniformly applied policies and practices thus resulted in untimely and
26 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
27 members worked shifts of at least eight hours, which required at least two rest breaks, and often
28 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions

1 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
2 permitted to take a second or a third break, and those that were provided were often late and
3 generally interrupted by job duties and requirements. Employees were not permitted to take any
4 cooldown periods.

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

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

1 work demands.

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

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

1 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
2 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

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

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

24 46. Moreover, Defendants have also consistently failed to provide Class members with
25 timely, accurate, and itemized wage statements, in writing, as required by California wage-and-
26 hour laws, including by understating piece rate units or commissions, the requirement of off the
27 clock work, the failure to pay all overtime and double time wages owed and failure to pay them at
28 the appropriate premium rates, and the failure to pay premium wages for unprovided or otherwise

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

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

27 48. Additionally, California Labor Code § 226.2(a)(1) states that, for “employees
28 compensated on a piece-rate basis during a pay period, . . . Employees shall be compensated for

1 rest and recovery periods and all other nonproductive time separate from any piece-rate
2 compensation.” Defendants failed to do so for Plaintiff and the Class Members when they were
3 paid on a piece rate basis, including by failing to comply with the other provisions of Labor Code
4 § 226.2 addressing the requirements for compensating employees for rest and recovery periods
5 and other non-productive time separate from piece rate compensation. Employees were paid on a
6 piece rate basis. However, Defendants failed to separately pay Employees for their rest periods
7 and cooldown periods in violation of Labor Code § 226.2 and California minimum wage laws,
8 discussed above.

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

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

27 51. Additionally, Labor Code § 1198 requires that “. . . the standard conditions of
28 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The

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

11 52. Plaintiff has also requested records from Defendants and they have failed to
12 constructively respond or to fully respond. Therefore, Plaintiff also asserts that Defendants have
13 had a consistent policy of denying Plaintiff and Class members the right to inspect and receive all
14 of their payroll records, timecards, and personnel records.

15 53. Additionally, from at least four years prior to the filing of this lawsuit and
16 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
17 incur necessary business expenses in the course of performing their required job duties without
18 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
19 calls from management, the use of his cell phone to record his time entries on the Workforce app,
20 the purchase of protective equipment such as work boots, goggles, face shields, and gloves, and
21 the purchase of bathroom supplies such as soap and toilet paper. Plaintiff and the Class members
22 must be reimbursed for these necessary business expenses under Labor Code § 2802, and
23 Defendants systematically failed to do so.

24 54. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
25 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.2,
26 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
27 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title
28 8, section 11000 *et seq.*

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

5 **CLASS ALLEGATIONS**

6 56. Plaintiff brings this class action on behalf of himself and all others similarly
7 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
8 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
9 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
10 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
11 hourly or piece-rate or commission employees within the State of California.” This includes all
12 hourly or piece-rate or commission auto body repair employees and those in similar and related
13 positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

28 e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not

1 compensated reporting time pay.

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

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

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

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

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

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

21 l. Subclass 12. Expense Reimbursement Subclass. All Class members who incurred
22 necessary and reasonable expenses in connection with performing their job duties for Defendants
23 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

27 57. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
28 modify the class description with greater particularity or to provide further division into subclasses

1 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
2 against Defendants, the Class Period should be adjusted accordingly.

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

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

17 **A. Numerosity**

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

24 **B. Commonality**

25 61. There are questions of law and fact common to the Class that predominate over any
26 questions affecting only individual Class members. The common questions are numerous and
27 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
28 Labor Code addressed above. As such, these common questions predominate over individual

1 questions concerning each individual Class Member's showing as to his or her eligibility for
2 recovery or as to the amount of damages. These common questions of law and fact include:

- 3 a. Whether Defendants failed to pay Employees minimum wages, including for all
4 hours worked, piece rate units or commissions;
- 5 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 6 c. Whether Defendants failed to pay Employees overtime as required under Labor
7 Code § 510;
- 8 d. Whether Defendants paid reporting time pay under the applicable wage order and 8
9 CCR § 11090(5);
- 10 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
11 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
12 premium pay in lieu thereof;
- 13 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
14 Orders, by failing to authorize and permit Employees to take requisite rest breaks
15 or cooldown periods or provide premium pay in lieu thereof;
- 16 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
17 inaccurate wage statements and wage statements that omitted many of the Section
18 226(a) requirements.
- 19 h. Whether Defendants violated Labor Code § 226.2 by failing to separately
20 compensate Employees paid on a piece rate basis for their rest periods;
- 21 i. Whether Defendants violated Labor Code § 221;
- 22 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
23 wages and compensation due and owing at the time of termination of employment;
- 24 k. Whether Defendants' conduct was willful;
- 25 l. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
26 IWC Wage Orders by failing to maintain accurate records of Class members' earned wages
27 and work periods;
- 28 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

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

D. Adequacy of Representation

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

E. Superiority of Class Action

64. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only

1 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
2 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

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

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

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

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

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

1 of the Class as to minimum wage pay.

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

7 72. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
8 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
9 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
10 applicable minimum wage rate fixed by the commission for work during the relevant period is
11 found in the Wage Orders.

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

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

24 75. Additionally, California Labor Code § 226.2(a)(1) states that, for “employees
25 compensated on a piece-rate basis during a pay period, . . . Employees shall be compensated for
26 rest and recovery periods and all other nonproductive time separate from any piece-rate
27 compensation.” Defendants failed to do so for Plaintiff and the Class Members when they were
28 paid on a piece rate basis, including by failing to comply with the other provisions of Labor Code

1 § 226.2 addressing the requirements for compensating employees for rest and recovery periods
2 and other non-productive time separate from piece rate compensation. Employees were paid on a
3 piece rate basis. However, Defendants failed to separately pay Employees for their rest periods, at
4 least for the majority of the Class period, in violation of Labor Code § 226.2 and California
5 minimum wage laws, discussed above.

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

15 77. As a direct result of Defendants' unlawful wage practices as alleged herein,
16 Plaintiff and the other members of the Class did not receive the correct minimum wage
17 compensation for their time worked for Defendants and for all piece rate units earned, including
18 by not receiving wages for all rest periods and all rest and recovery and non-productive work time
19 when they were paid on a piece rate basis.

20 78. California Labor Code § 1194.2 also provides for the following remedies: "In any
21 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
22 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

24 79. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
25 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
26 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
27 pay each employee minimum wages.

28 80. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are

1 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
2 interest thereon.

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

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

21 **SECOND CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

26 84. California Labor Code § 1194 provides that "any employee receiving less than the
27 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
2 may be maintained directly against the employer in an employee's name without first filing a
3 claim with the Division of Labor Standards and Enforcement.

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

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

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

1 respond to demands from customers and managers.

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

9 89. During the Class Period, Plaintiff and the other members of the Class were paid
10 less for time worked and piece rate units and/or commissions than they were entitled to,
11 constituting a failure to pay all earned wages. By virtue of Defendants' unlawful failure to
12 accurately pay all earned compensation to Plaintiff and the other members of the Class for the true
13 time they worked and piece rate units and/or commissions they earned, Plaintiff and the other
14 members of the Class have suffered and will continue to suffer an economic injury in amounts
15 which are presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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

20 94. Employees have been damaged by these violations of California Labor Code §§
21 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
22 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
23 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
24 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
25 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
26 any order or ruling of the commission.”

27 95. Consequently, pursuant to the California Labor Code, including Labor Code §§
28 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including

1 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
2 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
3 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
4 against Defendants, and each of them, and any additional sums as provided by the Labor Code
5 and/or other statutes.

6 **THIRD CAUSE OF ACTION**

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

8 **(Against All Defendants)**

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

104. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable

1 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
2 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
3 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
4 to authorize and permit Plaintiff and the Class members to take lawful rest breaks. Employees
5 were often required to work or to otherwise remain under Defendants' control during rest periods,
6 including by responding to work requirements, and had breaks provided untimely as a result of the
7 above described off the clock work.

8 105. Defendants also failed to provide Employees with any recovery or "cooldown"
9 periods to prevent heat illness in violation of Labor Code § 226.7. On information and belief,
10 Defendants failed to maintain reasonable temperatures throughout Defendants' work sites and did
11 not provide Employees with any cooldown periods as a respite from the high temperatures inside
12 the repair shop.

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

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

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

1 Wage Order.

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

7 **FIFTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

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

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

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

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

24 114. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
26 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
27 wages, including reporting time pay, with interest, plus their reasonable attorneys’ fees and costs,
28 as well as the assessment of any statutory penalties against Defendants, and each of them, and

1 any additional sums as provided by the Labor Code and/or other statutes.

2 **SIXTH CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

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

14 117. Defendants failed to provide Plaintiff and the similarly situated Employee Class
15 members with accurate itemized wage statements in writing, as required by the Labor Code and
16 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
17 Employees by Defendants failed to accurately account for wages, overtime, hours worked, pieces
18 rate units and/or commissions earned, hourly rates and piece rates, and did not provide pay for
19 non-productive time and premium pay for deficient meal periods and rest breaks, all of which
20 Defendants knew or reasonably should have known were owed to Employees, as alleged
21 hereinabove. Moreover, the wage statements Defendants provided to the Employees in the Class
22 failed to list or to accurately list the wage rates or the hours worked at those rates or pieces rate
23 unit and/or commissions earned during the pay period which led to the calculated pay listed by
24 Defendants without any further detail. Wage statements issued by Defendants to Employees
25 reference "Flag Bonus," "Unflagged earns," and "Guarantee Ajd" which bear no corresponding
26 rate, hours, or formula as to how they were calculated. These sporadic payments appear randomly
27 throughout wage statements issued to Plaintiff during his tenure and made it difficult for him to
28 discern the accuracy of his compensation.

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

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

24 120. Plaintiff and the Class members suffered injury as a result of Defendants’ knowing
25 and intentional failure to provide them with the wage and hour statements as required by law and
26 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
27 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
28 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),

1 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
2 wage statement alone one or more of the following: (i) The amount of the gross wages or net
3 wages paid to the employee during the pay period or any of the other information required to be
4 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
5 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
6 wages paid to the employee during the pay period, (iii) The name and address of the employer
7 and, (iv) The name of the employee and only the last four digits of his or her social security
8 number or an employee identification number other than a social security number. For purposes
9 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
10 objective standard] would be able to readily ascertain the information without reference to other
11 documents or information.

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

20 122. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
21 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
22 Class suffered injuries, including among other things confusion over whether they received all
23 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
24 them to make mathematical computations to analyze whether the wages paid in fact compensated
25 them correctly for all hours worked.

26 123. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
27 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
28 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and

1 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
2 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
3 an award of costs and reasonable attorneys' fees.

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 221**
6 **(Against All Defendants)**

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

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

14 126. Defendants unlawfully received and/or collected wages from the Employees in the
15 Class by understating and underpaying piece rate units and/or commissions, requiring off the
16 clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of
17 compensation for every meal and rest period violation endured by Plaintiff and the other Class
18 members, as alleged above. By not compensating Employees for all hours worked and meal and
19 rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code §
20 221.

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

23 **EIGHTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 204**
25 **(Against All Defendants)**

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

28 129. Labor Code § 204 instructs that: "All wages, ...earned by any person in any

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

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

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

28 132. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to

1 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
2 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
4 applicable IWC Wage Orders.

5 **NINTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 203**
7 **(Against All Defendants)**

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

10 134. Plaintiff and numerous Class members are no longer employed by Defendants; they
11 either quit Defendants' employ or were fired therefrom.

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

14 136. The wages withheld from these Employees by Defendants remained due and owing
15 for more than thirty days from the date of separation from employment.

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

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

1 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
2 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
3 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
4 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
5 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
6 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
7 “violates...any provision of this chapter or any order or ruling of the commission.”

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

12 **TENTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

21 142. During the course of Plaintiff’s and Employees’ employment, Defendants
22 consistently failed to maintain accurate time, piece rate and/or commissions and wage records for
23 Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay them
24 proper wages, overtime, and premium pay as discussed above and failing to document and pay for
25 actual hours worked.

26 143. Defendants are also required by the California Labor Code § 1198 and the
27 applicable Wage Order to maintain a tracking system that accurately records the times during
28 which Employees work.

1 144. Defendants have maintained a common unlawful policy and practice of failing to
2 accurately record all hours worked and all meal period start and end times.

3 145. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
4 knew wages to be due but failed to pay them.

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

7 **ELEVENTH CAUSE OF ACTION**
8 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**
9 **(Against All Defendants)**

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

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

17 149. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
18 or his or her representative, has the right to inspect and receive a copy of the personnel records
19 that the employer maintains relating to the employee's performance or to any grievance concerning
20 the employee. Under this statute, upon written request from a current or former employee or his or
21 her representative, an employer must make the contents of those personnel records available for
22 inspection or provide a copy of the personnel records to the current or former employee, or his or
23 her representative, not later than thirty calendar days from the date the employer receives the
24 written request, subject to some limited exceptions. Failure to comply with these requests allows
25 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
26 226(f).

27 150. Plaintiff sent written requests through his counsel to Defendants for their payroll
28 records, timecards, and personnel records. However, Plaintiff has not received all of his requested

1 records as of the date of this Complaint.

2 151. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
3 produce the required records requested by Plaintiff.

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

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

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

12 **TWELFTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

17 156. Plaintiff is informed and believes and based thereon alleges that throughout the
18 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
19 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
20 in responding to calls from management, the use of his cell phone to record his time entries on the
21 Workforce app, the purchase of protective equipment such as work boots, goggles, face shields,
22 and gloves, and the purchase of bathroom supplies such as soap and toilet paper. Plaintiff and the
23 Class members must be reimbursed for these necessary business expenses under Labor Code §
24 2802 and Defendants systematically failed to do so.

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

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

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

THIRTEENTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

162. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in that Defendants' policy and practice failed to provide the required amount of

1 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
2 Class members for all hours worked, due to systematic business practices as alleged herein that
3 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
4 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
5 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
6 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

26 167. By the conduct alleged herein, Defendants have engaged and continue to engage in
27 a business practice which violates California and federal law, including but not limited to, the
28 applicable Industrial Wage Order(s), the California Code of Regulations, and the California

1 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
2 Court should issue declaratory and other equitable relief pursuant to California Business &
3 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
4 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

14 **RELIEF REQUESTED**

15 WHEREFORE, Plaintiff prays for the following relief:

- 16 1. For an order certifying this action as a class action;
- 17 2. For compensatory damages in the amount of the unpaid minimum wages for work
18 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
19 the filing of this action, as may be proven;
- 20 3. For liquidated damages in the amount equal to the unpaid minimum wage and
21 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 22 4. For compensatory damages in the amount of all unpaid wages, including overtime
23 and double-time pay, as may be proven;
- 24 5. For compensatory damages in the amount of the hourly wage made by Employees
25 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
26 years prior to the filing of this action, as may be proven;
- 27 6. For compensatory damages in the amount of the hourly wage made by Employees
28 for each day requisite rest breaks were not provided or were deficiently provided where no

premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

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

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

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

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

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

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

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

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

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

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

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

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

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

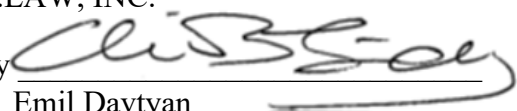
20. For an award of attorneys' fees; and

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

DATED: November 13, 2023

D.LAW, INC.

By



Emil Davtyan

David Yermian

Alvin B. Lindsay

Tania Fonseca

Attorneys for Plaintiff

Akop Cholakian and the putative class

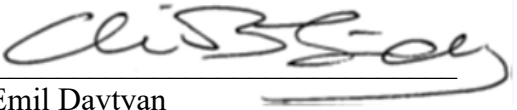
DEMAND FOR JURY TRIAL

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

DATED: November 13, 2023

D.LAW, INC.

By



Emil Davtyan
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