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of himself and others similarly situated

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

SERGIO SALGADO, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

FLINT DESIGN BUILD, LLC, a California
limited liability company; FLINT
BUILDERS, INC., a California Stock
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: S-CV-0051599

CLASS ACTION

Assigned for All Purposes To:

Hon. To be assigned

Dept.: 40

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Records under §§ 226 and 1198;
11. Violation of Labor Code §§ 206, 206.5, 432.5;
12. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
13. Violation of Business & Professions Code § 17200 *eq.*
14. Penalties under PAGA Labor Code § 2698

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DEMAND FOR JURY TRIAL

Original Complaint Filed: November 6, 2023
Trial Date: None Set

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

5 INTRODUCTION

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

15 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
16 Defendants in positions generally pertaining to providing construction and design building
17 services to Defendants’ clients. Plaintiff, and upon information and belief the other similarly
18 situated Employees in the Class, were required to perform work tasks based out of Defendants’
19 construction sites and projects based in California. Plaintiff was employed by Defendants as a
20 laborer, and Defendants tasked him with duties that included assisting with erecting walls,
21 installing rigid insulation and shade structures, installing girts, excavating footings, pre-casting
22 concrete seatwalls, patching and demolishing walls and ceilings.

23 3. Defendants employed other similarly situated Employees in similar and related
24 positions based out of Defendants’ construction sites and projects and facilities and offices
25 throughout California, including upon information and belief in the cities of Roseville, Davis,
26 Santa Cruz, Napa Valley, Colusa, Klamath, Redding, Oroville, Lincoln, Los Gatos, Livermore,
27 Placer, Elk Grove, Gilroy, Orangevale, San Jose, Fair Oaks, Morgan Hill, Sacramento, Bishop,
28 Herald, Stockton, Antelope, Citrus Heights, Rocklin, Riverside, Tuolumne, Mariposa, Folsom,

1 Moffett Field, Fairfield, Dublin, Hayward, and Stockton. Plaintiff and the other similarly situated
2 Class Members worked at Defendants' behest without being paid all wages due and without being
3 provided all required breaks. More specifically, Plaintiff and the other similarly situated Class
4 Members were employed by Defendants and (1) shared similar job duties and responsibilities (2)
5 were subjected to the same policies and practices (3) and endured similar violations at Defendants'
6 hands.

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

16 5. Defendant FLINT DESIGN BUILD, LLC is a California limited liability company
17 which lists its principal address in Roseville, California with the California Secretary of State. It
18 lists a registered corporate agent with an address in Roseville, California and in Placer County.
19 FLINT DESIGN BUILD, LLC ("Flint Design") lists its type of business as "Construction." The
20 wage statements issued to Plaintiff starting in 2023 first listed "Flint Design-Build LLC" as the
21 employer and omitted an address for it and then listed "Flint Design Build dba FLINT," with the
22 same Roseville address listed with the California Secretary of State. Upon information and belief,
23 the form and content of the wage statements issued to Plaintiff from Flint Design are similar to
24 those Defendants issued to the other Class members.

25 6. Defendant FLINT BUILDERS, INC. ("Flint Builders") is a California corporation
26 which lists its principal California address and offices in Roseville, California at the same address
27 as Flint Design. Flint Builders lists its type of business as "General Construction". Upon
28 information and belief, Flint Design is a related entity to Flint Builders as either a parent,

1 subsidiary, or successor, and the wage statements issued to Plaintiff through the end of 2022 list
2 “Flint Builders Inc.” as the employer, with the same Roseville, California address. Upon
3 information and belief, the form and content of the wage statements issued to Plaintiff by Flint
4 Builders are similar in format and content to those Defendants issued to the other Class members.

5 7. Upon information and belief, Defendants Flint Builders and Flint Design do
6 business in California under the names “Flint” or “Flint LLC” or “Flint Builders,” and describe
7 themselves as a commercial general contractor specializing in design build services. The website
8 for Flint Builders explains that “FLINT focuses on the design-build and design-assist delivery
9 methods, producing the highest quality of projects and yielding the greatest value to our clients.”
10 The website lists its corporate office in Roseville, California and also lists offices for the Bay
11 Area, Orange County, and San Diego County.

12 8. 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 Placer county and
18 Defendants’ list a principal address in Roseville, California which is in Placer County. Defendants
19 also employ Class Members at construction sites and projects in Placer county and throughout
20 California.

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

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

FACTUAL BACKGROUND

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

12. During the course of Plaintiff and the Class Members' employment with Defendants, they were not paid all wages they were owed, including for all hours they were performing work tasks or remaining under Defendants' control (resulting in "off the clock" work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant

1 IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly
2 employees as laborers, carpenters, and in similar and related positions based out of their
3 construction sites and projects and offices and facilities in California.

4 13. Plaintiff was generally scheduled to work five to six days per week for eight to ten
5 hours per shift. Plaintiff's scheduled shift start times and end times consistently changed
6 throughout his employment with Defendant. On many occasions, Plaintiff was also required to
7 work longer shifts with an additional hour or two of time if it was approved by Defendants to be
8 paid at overtime premium rates. However, Plaintiff was required by Defendants to endure
9 substantial off the clock work before and after his scheduled shift hours.

10 14. Defendants' policy and practice of requiring systematic off the clock work flowed
11 in part from their unlawful timekeeping procedures. Defendants did not employ a timekeeping
12 records system into which Employees would input their contemporaneous entries. Plaintiff was
13 not responsible at all for recording his time entries. Defendants' managers and supervisors were
14 in charge of maintaining timekeeping entries for Plaintiff and all the Class Members, and were
15 completed to conform to scheduled or permitted hours rather than to reflect their actual hours
16 worked. As hours worked were not recorded contemporaneously, Defendants' managers often
17 forgot to make record of Plaintiff's hours worked. As a result, Defendants often asked Plaintiff to
18 recall his hours worked or often relied on scheduled shift times to compensate Plaintiff rather
19 than paying him for all his actual hours worked.

20 15. Additionally, Defendants often recorded in timekeeping records 30 minutes for a
21 meal period that was completed before the fifth hour of work as required under the Labor Code
22 and Wage Orders. However, Defendants automatically deducted full meal periods of 30 minutes
23 to reflect compliance without regard to when the meal period was provided or whether it was late
24 or otherwise interrupted or shortened by work requirements and manager instruction. Defendants
25 thus record compliant meal breaks without regard to whether they were actually taken on time or
26 for the full duration or were interrupted by management demands and other work requirements.
27 Additionally, by automatically deducting 30 minutes for a meal period, Defendants effectively
28 and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work

1 shifts without paying the meal period premium for a missed break. Managers would again modify
2 and adjust any timekeeping entries recorded for meal periods that were facially non-compliant to
3 reflect they were provided timely or were not shortened or interrupted in order to avoid incurring
4 and paying meal period premium penalty wages.

5 16. Defendants strictly required Plaintiff to be prepared to begin work at his scheduled
6 shift start time, and Plaintiff was reprimanded if he was not. However, for Plaintiff to be prepared
7 to begin working exactly at his shift start time he was compelled to arrive at his assigned
8 construction or project site at least 20 minutes before his scheduled shift start time. Plaintiff was
9 also required to arrive before his scheduled shift time so he could be present for the mandatory
10 daily pre-shift meeting, where Defendants' managers would inform Plaintiff and the Class
11 members of their assigned tasks and duties for the work shift. Plaintiff's time entries were
12 inputted by managers after the meetings failed to account for such off the clock time for meetings
13 and any other requirements to be prepared to begin work at the scheduled shift start time.
14 Plaintiff was either performing job duties or was otherwise under Defendants' control during all
15 these pre-shift activities and Defendants should have paid him accordingly.

16 17. If Plaintiff worked beyond his scheduled hours or otherwise worked overtime,
17 Defendants managers were in charge of recording it, but they again did so by only recording
18 entries based on scheduled and approved hours rather than based on the actual hours he worked.
19 With difficult to attain production goals and consistent manager and supervisor demands on him,
20 Plaintiff was also compelled to work many hours off the clock and without compensation. To
21 whatever extent Defendants paid overtime for these hours and any other form of remuneration to
22 Plaintiff and the Class, such as shift differentials and the like, upon information and belief
23 Defendants failed to include them in the regular rate used to calculate and pay the overtime that
24 Defendants did pay.

25 18. Plaintiff was therefore not paid for all his hours worked at the required minimum,
26 overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy
27 and practice of requiring him to work off the clock and without pay, including by paying for
28 scheduled or presumed hours rather than actual hours worked. Defendants systematically

1 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
2 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
3 day at the required double time rate. Upon information and belief, the Class Members were bound
4 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
5 hands as Plaintiff.

6 19. Defendants have either failed to maintain timekeeping records for Plaintiff that
7 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
8 required and the actual hours Plaintiff worked or the breaks he received or have otherwise
9 declined to produce them to Plaintiff in response to a timely and lawful records request. As for
10 the timekeeping records Defendants were required to maintain, they were unlawfully inaccurate
11 due to pervasive off the clock work. Despite this, and as addressed in detail below, Defendants
12 unlawfully required Plaintiff to attest by signature to receiving all breaks and to not working off
13 the clock for all shifts during a pay period if he wanted to be paid. By failing to pay for all hours
14 worked, and by under-recording regular hours to the detriment of the Class Members, Defendants
15 have committed knowing and intentional ongoing violations of the record keeping requirements
16 under the Labor Code, including section 1174, by either failing to maintain records or retaining
17 inaccurate ones.

18 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
19 and the Class Members is and has been a direct consequence of Defendants' unlawful
20 compensation policies and practices, which upon information and belief applied uniformly to the
21 Class Members working based out of Defendants' construction sites and projects and facilities
22 and offices throughout California. As a result of the above-described unlawful requirements to
23 work off the clock, the failure to accurately record all hours worked and pay wages at the correct
24 rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
25 Members were not properly paid all wages earned and all wages owed to them by Defendants,
26 including when working more than eight hours in any given day and/or more than forty hours in
27 any given week.

28 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing

1 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
2 hours worked and failing to pay minimum wages for all time worked or under Defendants'
3 control, as required by California law. Also, from at least four years prior to the filing of this
4 lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to
5 pay Employees overtime compensation at premium overtime rates for all hours worked in excess
6 of eight hours a day and/or forty hours a week and double-time rates for all hours worked in
7 excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of
8 IWC Wage Orders.

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

17 23. More specifically, Plaintiff worked shifts that entitled him to at least one meal
18 period and on many and most occasions two when his shifts extended beyond 10 hours.
19 Defendants' ostensibly scheduled Plaintiff's and Class Members' lunch meal period at noon.
20 However, Plaintiff can recall only a handful of instances where any provided meal break actually
21 took place at the scheduled time, as there always seemed to be an urgent construction task or
22 production goal that had to be complete prior to lunch. Shifts often progressed well past the five-
23 hour mark such that many provided breaks were untimely, yet Defendants' managers would record
24 timely and otherwise compliant meal period start and end times to avoid paying meal period
25 premium wages. This led to systematically late meal periods, if they were provided at all, and on-
26 duty meal periods that were incessantly interrupted by management demands. The difficult to
27 attain production goals and management expectations also contributed to Employees working
28 through meal periods or not taking them or taking them late so work could be accomplished, or

1 they were otherwise required to remain under Defendants' control during meal periods.

2 24. Defendants' managers would record that Plaintiff and the Class Members were
3 provided with a full 30 minutes for a meal period before the fifth hour of work, as required under
4 the Labor Code and Wage Orders. Defendants' managers thus recorded compliant meal breaks
5 without regard to whether they were actually taken on time or for the full duration or were
6 interrupted by management demands and other work requirements. Plaintiff recalls generally that
7 any meal period he was ever able to take included only 20-25 minutes of actual duty-free break
8 time, as Defendants managers consistently required him to return to his worksite or workstation
9 prior to the thirty-minute mark. Despite this fact, Defendants automatically deducted 30 minutes
10 for a meal period on each work shift without regard to whether it was actually taken or was
11 otherwise unlawful.

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

20 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
21 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
22 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
23 Members were required to perform work as ordered by Defendants for more than five hours
24 during a shift without receiving compliant meal periods. Additionally, as addressed above,
25 Defendants followed a practice of requiring off the clock work in a manner that would impact
26 when Employees were to receive meal periods and rest breaks and required them to respond to
27 work and management demands during breaks, thus leading to further violations.

28 27. Upon information and belief, Defendants' systems did not automatically generate a

1 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
2 into a work shift or in the event the time punch records reflected a meal period of less than thirty
3 minutes. However, upon information and belief, in the event Defendants did pay any meal period
4 premiums, they did so at the employee's customary regular rate of hourly compensation without
5 including all forms of remuneration in that hourly rate calculation, for example by omitting
6 performance-based bonuses and the like from the rate at which meal premiums were paid.

7 28. Defendants thus followed uniformly applied policies of not providing all required
8 meal periods to their Employees. Meal periods were often not properly provided, as work
9 demands and production goals impermissibly shortened their breaks. Even when Plaintiff and the
10 Class Members were able to take a meal period, it was generally interrupted by work duties or was
11 taken after the fifth hour of work. Additionally, as addressed above, Defendants followed a
12 practice of requiring off the clock work in a manner that would impact when Employees were to
13 receive meal periods and rest breaks, thus leading to further violations.

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

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

- 27 (a) Class Members were not provided full thirty-minute duty free meal periods
28 for work days in excess of five hours and were not compensated one hour's

wages in lieu thereof, or were not compensated at the correct regular rate of compensation, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

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

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

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

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

31. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members were either not authorized permitted the opportunity to take a rest break or were required to remain under Defendants' control and respond to calls and instructions from management and job demands if and when they even attempted to take one. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members to remain under their control during rest break times that are required to be off duty.

32. Rest breaks were not scheduled by Defendants. Given that Plaintiff generally worked at least eight hours per shift, Plaintiff was entitled to receive at least two paid, timely, uninterrupted, and duty-free ten-minute rest breaks during each of his work shifts, but this was hardly ever the case. On shifts over 10 hours, Defendants also consistently failed to authorize and permit him to take required rest breaks. This practice again unlawfully failed to pay Employees for rest break time, or rather failed to pay them the premium wage penalty payment for every rest break violation, which also must be compensated at the regular rate.

33. Defendants' uniformly applied policies and practices thus resulted in untimely and

1 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
2 Members worked shifts of at least eight hours, which required at least two rest breaks, and often
3 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
4 when Defendants authorized and permitted Plaintiff to take a first rest break, he was generally not
5 permitted to take a second or a third break. On some occasions, Defendants would also require
6 Plaintiff and the Class members to combine their second break with the first rest break.
7 Additionally, those rest breaks Defendants did authorize and permit were often late and generally
8 interrupted by job duties and requirements.

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

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

1 35. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
3 deducting the Employees' earned wages, including by the above described off the clock work and
4 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
5 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely
6 lawfully provided without violation. Thus, by automatically deducting 30 minutes for a meal
7 period without regard to whether it was lawfully provided or not, Defendants effectively and
8 unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts.
9 By not compensating Employees for all hours worked and time shaving and requiring off the clock
10 work, and by requiring work and control during meal periods and deducting 30 minutes
11 automatically, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

3 37. Upon information and belief, Defendants also failed to provide Employees such as
4 Plaintiff at the time of his employment and thereafter with written notice complying with all the
5 requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer
6 shall provide to each employee a written notice, in the language the employer normally uses to
7 communicate employment-related information to the employee, containing" specific required
8 information. Upon information and belief, Defendants failed to provide this information to the
9 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
10 provide Plaintiff and the aggrieved employee Class Members certain specific information upon
11 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
12 any such information when he was hired or have failed to produce them, and upon information
13 and belief Defendants committed similar violations in connection with similarly situated and
14 aggrieved Class Members.

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

- 18 a. failing to pay all wages owed to Class Members who either were discharged, laid
19 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
20 203;
- 21 b. failing to pay all wages owed to the Class Members twice monthly in accordance
22 with the requirements of Labor Code § 204;
- 23 c. failing to pay Class Members all wages owed, including all meal and rest period
24 premium wages, and failing to pay them at the regular rate of compensation;
- 25 d. failing to maintain accurate records of Class Members' hours worked and earned
26 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
27 7 of the applicable IWC Wage Orders; and
- 28 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful

1 request to receive them under these authorities.

2 39. Defendants have also consistently failed to provide Class Members with timely,
3 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
4 including by the above-described requirement of off the clock work, failure to pay all overtime
5 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
6 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
7 miscalculating any overtime or meal period or rest break premium wages and by the systematic
8 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
9 difficult to account with precision for the unlawfully withheld wages and meal and rest period
10 compensation owed to Plaintiff and the Class, during the liability period, including because they
11 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
12 and because they did not implement and preserve a record-keeping method as required for non-
13 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
14 California Wage Orders. Upon information and belief, time clock punches were not maintained or
15 were not accurately maintained for work shifts and meal periods, which were automatically
16 presumed by Defendants to have been lawfully provided when they were not. Defendants also
17 failed to accurately record and pay for all regular and overtime hours worked and submitted by
18 Plaintiff and the Class Members, including by failing to pay all overtime hours at the correctly
19 calculated overtime premium rate. Defendants also failed to provide an address when Flint Design
20 was listed as the employer on certain wage statements issued to Plaintiff.

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

1 payment of wages and accurately reporting total hours worked.

2 41. Defendants also required Plaintiff and the Class Members to work hours off the
3 clock for which they were not compensated. They were required to endure off the clock work
4 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
5 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
6 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
7 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
8 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
9 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
10 two hours of their resignation, as required by California wage-and-hour laws including Labor
11 Code § 203.

12 42. Additionally, despite Defendants' unlawful timekeeping records practices
13 addressed above, Defendants required Plaintiff to review his timekeeping records for a given pay
14 period and sign a statement attesting that he had been "authorized and permitted to take my meal
15 and rest breaks as allowed by Company policy on each day worked. No one interfered with,
16 discouraged, or stopped me from taking my breaks." Plaintiff was also compelled to attest that he
17 agreed that "all reported hours worked" (i.e., those rounded hours conforming exactly to scheduled
18 shift times rather than all hours worked), "are accurate and I did not work "off the clock." Upon
19 information and belief, other Class members were also required to sign a similar release and
20 waiver of their wage and meal and rest break claims if they wanted to be paid.

21 43. As established above, Defendants' supervisors completed Employee time sheets to
22 conform to scheduled shift times rather than actual hours worked. If Plaintiff and the Class
23 Members did not sign time sheets agreeing to the above-described release of any claims that
24 Defendants failed to compensate Employees for all hours worked or failed to provide meal periods
25 or authorize and permit rest periods, then they would not be paid. Defendants' actions requiring
26 such unlawful releases as a pre-condition to receiving payment of wages for all hour worked and
27 receiving meal periods and rest breaks, or penalty wage premium payments in lieu thereof, were
28 and have been in violation of Labor Code §§ 206, 206.5 and 432.5. Defendants' uniformly applied

1 and unlawful policy and practice of requiring releases of wage claims as a pre-condition to being
2 paid entitles Plaintiff and the Class Members to damages in a sum to be proven at trial, as well as
3 treble damages and the assessment of any statutory and/or civil penalties against the Defendants in
4 a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order
5 paragraphs.

6 44. Additionally, from at least four years prior to the filing of this lawsuit and
7 continuing to the present, Defendants have also regularly required Plaintiff and the Class Members
8 to incur necessary business expenses in the course of performing their required job duties without
9 reimbursement. These included the cell phone related expenses Plaintiff incurred in responding to
10 calls from his supervisor regarding Plaintiff's schedule and assignments. Plaintiff and the Class
11 Members must be reimbursed for this necessary business expenses under Labor Code § 2802 and
12 Defendants systematically failed to do so.

13 45. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
14 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 206, 206.5, 218, 218.5, 218.6, 221, 226,
15 226.4, 226.7, 246, 248.1, 248.2, 248.5, 432.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12,
16 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of
17 Regulations, Title 8, section 11000 *et seq.*

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

22 **CLASS ALLEGATIONS**

23 47. Plaintiff brings this class action on behalf of himself and all others similarly
24 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often
25 referred to as "the Class" or "Class Members") defined as follows: "All individuals employed by
26 Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and
27 ending on a date as determined by the Court ("the Class Period"), and who have been employed as
28 non-exempt, hourly employees by Defendants within the State of California." This includes all

types of laborers and carpenters and those in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

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

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

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

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

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

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

5 k. Subclass 11. Unlawful Release Subclass. All Class Members who were required to
6 sign releases or waivers of their wage or meal or rest break claims for a pay period as a pre-
7 condition to receiving their corresponding paycheck.

8 k. Subclass 12. Expense Reimbursement Subclass. All Class Members who incurred
9 necessary and reasonable expenses in connection with performing their job duties for Defendants
10 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

11 l. Subclass 13. UCL Subclass. All Class Members who are owed restitution as a
12 result of Defendants' business acts and practices, to the extent such acts and practices are found to
13 be unlawful, deceptive, and/or unfair.

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

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

27 50. This action has been brought and may properly be maintained as a class action
28 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community

of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class Members that Defendants are required to maintain under California law.

A. Numerosity

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

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not

1 providing employees with all required sick days and COVID-19 supplemental sick
2 leave;

3 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
4 inaccurate wage statements;

5 h. Whether Defendants violated Labor Code § 221;

6 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
7 wages and compensation due and owing at the time of termination of employment;

8 j. Whether Defendants' conduct was willful;

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

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

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

17 n. Whether Defendants violated Labor Code §§ 206, 206.5 and 432.5 by requiring
18 Employees to release wage claims in order to receive paychecks;

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

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

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

24 **C. Typicality**

25 53. The claims of the named plaintiff are typical of those of the other Employees. The
26 Employee Class Members all sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
28 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

1 the off the clock work and meal and rest violations he was required to endure are typical of those
2 of the other Class Members.

3 **D. Adequacy of Representation**

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

7 **E. Superiority of Class Action**

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

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

24 57. Class action treatment will allow those persons similarly situated to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
27 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
28 set forth the subject and nature of the instant action. The Defendants' own business records can be

1 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
2 that any further notice is required additional media and/or mailings can be used.

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

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

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO PAY MINIMUM WAGES**
20 **(Against All Defendants)**

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

23 61. Defendants failed to pay Employees minimum wages for all hours worked.
24 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
25 would work hours and not receive wages, including as alleged above in connection with off the
26 clock work. Defendants also failed to pay Plaintiff and the Class members for all the time they
27 were required to remain on duty and under Defendants' control during breaks and due to the
28 work demands placed upon them by Defendants' management and Defendants' practice of

1 paying what should have been overtime hours as regular hours. Defendants' uniformly applied
2 policies required systematic off the clock work and underpayment of all wages owed to
3 Employees over a period of time, while benefiting Defendants. During the relevant time period,
4 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class Members,
5 including by requiring systematic off the clock work. To the extent any local wage ordinances
6 were also applicable to paying the employees an hourly rate above the minimum wage rate,
7 Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of
8 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
9 whole, as a result of implementing a uniform policy and practice that denied accurate
10 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

27 65. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
28 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,

1 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
2 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
3 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
4 the absence of a contractually agreed upon one.

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

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

18 68. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
19 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
20 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
21 pay each employee minimum wages.

22 69. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are
23 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
24 interest thereon.

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

28 71. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

74. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular

1 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
2 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
3 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
4 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
5 work in a workweek.

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

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

25 77. Therefore, Employees were not properly compensated, nor were they paid overtime
26 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
27 Based on information and belief, Defendants did not make available to Employees a reasonable
28 protocol for correcting time records when Employees worked overtime hours or to fix incorrect

1 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
2 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
3 Class Members to work through meal periods when they were required to be clocked out or to
4 otherwise work off the clock to complete their daily job duties.

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

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

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

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

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

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

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

26 94. Defendants failed to authorize and permit Plaintiff and the Class Members to take
27 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
28 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed

1 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
2 12 and 20 of the applicable IWC Wage Orders.

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

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

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

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

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

27 99. Throughout the liability period, Defendants intentionally failed to furnish to
28 Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately

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

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

27 101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
28 are required "to pay each employee, on the established payday for the period involved, not less

1 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
2 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
3 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class Members
4 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
5 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
6 IWC Wage Orders.

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

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

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

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

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

106. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work, by miscalculating overtime, and by automatically deducting time for meal periods when they were not lawfully provided and not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. By not compensating Employees for all hours worked and by automatically deducting hours for unlawfully provided meal periods and time shaving and rounding to reflect scheduled hours rather than actual hours, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

109. Labor Code § 204 instructs that: "All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." As detailed above, Defendants

1 maintained a consistently applied policy and practice of not paying all wages earned between the
2 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
3 between the 16th and the last day of the month between the 1st and 10th day of the following month.
4 Defendants similarly failed to pay all wages earned by not more than seven calendar days
5 following the close of the payroll period.

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

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

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

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

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

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

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

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

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

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

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

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

8 **NINTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

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

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

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

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

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

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

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

3 **TENTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

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

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

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

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

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

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

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

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

8 **ELEVENTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE §§ 206, 206.5, 432.5**
10 **(Against All Defendants)**

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

13 136. Labor Code § 206 instructs that: “(a) In case of a dispute over wages, the employer
14 shall pay, without condition and within the time set by this article, all wages, or parts thereof,
15 conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to
16 as to any balance claimed. (b) ...Any employer having the ability to pay who willfully fails to pay
17 such wages within 10 days shall, in addition to any other applicable penalty, pay treble the amount
18 of any damages accruing to the employee as a direct and foreseeable consequence of such failure
19 to pay.”

20 137. Labor Code § 432.5 instructs that: “No employer, or agent, manager,
21 superintendent, or officer thereof, shall require any employee or applicant for employment to
22 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
23 superintendent, or officer thereof to be prohibited by law.”

24 138. Additionally, California Labor Code § 206.5 prohibits employers from requiring
25 employees to execute releases of a claim or right “on account of wages due, or to become due, or
26 made as an advance on wages to be earned, unless payment of those wages has been made. A
27 release required or executed in violation of the provisions of this section shall be null and void as
28 between the employer and the employee.”

139. Defendants also followed a policy and practice of requiring Plaintiffs and other Class members to release their claims for meal or rest period violations and/or uncompensated hours worked or other off the clock work, in violation of California Labor Code § 206.5. If Plaintiff and the Class Members wanted to receive their pay checks for a given pay period, Defendants required Plaintiff and the other Employees to sign off on their time sheets agreeing to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a pre-condition to receiving their paychecks. Supervisors completed time sheets to conform to scheduled shift times rather than actual hours worked. If Plaintiff and the Class Members did not sign them agreeing to release any claims that Defendants did not compensate Employees for all hours worked or failed to provide meal periods or authorize and permit rest periods, then they would not be paid.

140. Defendants' actions requiring such unlawful releases as a pre-condition to receiving payment of wages for all hour worked and receiving meal periods and rest breaks were and have been in violation of sections 206, 206.5 and 432.5. Defendants' uniformly applied and unlawful policy and practice entitles Plaintiff and the Class Members to damages in a sum to be proven at trial, as well as treble damages and the assessment of any statutory and/or civil penalties against the Defendants in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802

(Against All Defendants)

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

142. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work related expenses they incurred. Defendants required Plaintiff and the Class Members to use their cellular phones to conduct work related, as addressed above. Plaintiff and the Class Members must be reimbursed for this necessary business expenses under Labor Code § 2802 and Defendants

1 systematically failed to do so.

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

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

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

19 **TWELFTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

28 147. Plaintiff is a "person" within the meaning of Business & Professions Code

1 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
2 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

27 152. Defendants, by engaging in the conduct herein alleged, by failing to pay wages
28 and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise

1 of reasonable care should have known that their conduct was unlawful; therefore their conduct
2 violates the Business & Professions Code § 17200 *et seq.*

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

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

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

19 **FOURTEENTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

28 58. In failing to pay Aggrieved Employees minimum wages and overtime, not

1 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
2 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
3 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
4 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
5 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
6 paragraph 7 of the applicable IWC Wage Orders.

7 59. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
8 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
9 including the penalty provisions, without limitation, based, inter alia, on the following California
10 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
11 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

12 60. More specifically, after complying with the notice procedures of Labor Code
13 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
14 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
15 addressed underlying claims and seeking penalties as specified by the applicable corresponding
16 provisions, including as follows:

17 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
18 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
19 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
20 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
21 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
22 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
23 to Labor Code § 2699(g)(1);

24 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
25 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
26 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
27 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
28 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under

1 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
2 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
3 pursuant to Labor Code § 2699(g)(1);

4 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
5 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
6 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
7 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
8 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
9 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
10 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
11 providing inaccurate wage statements and failing to maintain records as required under Labor
12 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
13 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
14 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
15 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
16 citation, ...";

17 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
18 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
19 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
20 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
21 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
22 § 2699(g)(1);

23 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
24 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
25 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
26 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
27 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
28 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs

1 pursuant to Labor Code § 2699(g)(1);

2 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:

3 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
4 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
5 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
6 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
7 2699(g)(1).

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

10 (a) Any employer or other person acting on behalf of an employer who violates, or
11 causes to be violated, a section of this chapter or any provision regulating hours and days of work
12 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
13 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
14 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages...

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

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

20 2. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
21 the LWDA and Defendants on November 6, 2023 (LWDA Case No. 992429-23) addressing in
22 detail the specific provisions of the Labor Code Defendants have violated and addressing the facts
23 and legal theories to support the alleged violations and requested penalties. The LWDA has not
24 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
25 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
26 violations addressed herein and in the PAGA Notice letter and the original Complaint.

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RELIEF REQUESTED

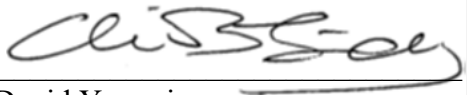
WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees 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, including treble damages, and statutory and civil penalties as may be proven and available for violations of Labor Code §§ 206, 206.5 and 432.5;

- 1 14. For damages and restitution for failure to reimburse all reasonable and necessary
2 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
- 3 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 4 16. For penalties under Labor Code § 558, as may be proven;
- 5 17. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 7 18. For an order enjoining Defendants and their agents, servants, and employees, and
8 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
9 duties adumbrated in this Complaint;
- 10 19. For other wages and penalties under the Labor Code as may be proven;
- 11 20. For all general, special, and incidental damages as may be proven;
- 12 21. For an award of pre-judgment and post-judgment interest;
- 13 22. For an award providing for the payment of the costs of this suit;
- 14 23. For an award of attorneys' fees; and
- 15 24. For such other and further relief as this Court may deem proper and just.

16
17 DATED: January 10, 2024

D.LAW, INC.
DAVID YEREMIAN & ASSOCIATES, INC.

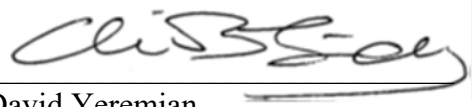
18
19 By 
20 David Yeremian
21 Alvin B. Lindsay
22 Attorneys for Plaintiff SERGIO SALGADO
23 and all others similarly situated
24
25
26
27
28

DEMAND FOR JURY TRIAL

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

DATED: January 10, 2024

D.LAW, INC.
DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff SERGIO SALGADO
and all others similarly situated

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