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Superior Court of California
County of Sacramento

08/26/2026

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8 KEVIN BELL, and all others similarly situated
(additional attorneys for Plaintiff(s) on following page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**
11 **(UNLIMITED JURISDICTION)**

12 KEVIN BELL, on behalf of himself and all
13 others similarly situated, and the general public,
and as an “aggrieved employee” on behalf of
14 other “aggrieved employees” and the State of
California under the Labor Code Private
15 Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.

18 AMERICAN PLUMBING SYSTEMS, INC., a
19 California corporation; WALTER JACOB
KUHLMAN, III, a natural person; JAMES JAY
20 HANACEK IV, a natural person; and DOES 1–
21 50, inclusive,

22 *Defendants.*

Case No. 26CV015989

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
5. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
6. Wage Statement Penalties (Lab. Code § 226);
7. Waiting Time Penalties (Lab. Code § 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
9. Civil Penalties (Lab. Code §§ 2898, et seq.)

JURY TRIAL DEMANDED



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1 Plaintiff, Kevin Bell (hereafter “Plaintiff” or “Bell”), on behalf of himself and all others
2 similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5
6 **I. INTRODUCTION**

7 1. Plaintiff brings this class and representative action for alleged violations of the
8 California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage
9 Order”), and the California Business and Professions Code against Defendants American
10 Plumbing Systems, Inc., a California corporation, Walter Jacob Kuhlman, III, a natural person,
11 James Jay Hanacek IV, a natural person, and Does 1 through 50, inclusive (collectively
12 “Defendants”).

13 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
14 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
15 related relief. These claims are based on Defendants’ failures to:

16 (A) Pay all wages, including minimum, regular, overtime and doubletime
17 wages, earned for all hours worked at the correct rates of pay;

18 (B) Pay all earned and unused vacation pay;

19 (C) Provide all meal periods;

20 (D) Authorize and permit all rest breaks;

21 (E) Pay premium wages for unprovided meal periods;

22 (F) Pay premium wages for unprovided rest breaks;

23 (G) Indemnify for necessary work-related expenditures;

24 (H) Only deduct wages lawfully;

25 (I) Issue only accurate and complete itemized wage statements; and

26 (J) Timely pay wages upon termination of employment.

27 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
28 restitution, civil and statutory penalties, attorneys’ fees, costs, and related relief through this class



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1 action.

2 **II. THE PARTIES**

3 3. Plaintiff Kevin Bell is a resident of California. At all relevant times, Plaintiff was
4 an “employee” within the meaning of Title 8 California Code of Regulations § 11040 and an
5 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

6 4. Defendant American Plumbing Systems, Inc. is a corporation organized and
7 existing under the laws of California and also a citizen of California based on Plaintiff’s
8 information and belief.

9 5. Defendant Walter Jacob Kuhlman is a natural person and a citizen of California
10 based on Plaintiff’s information and belief.

11 6. Defendant James Jay Hanacek IV is a natural person and a citizen of California
12 based on Plaintiff’s information and belief.

13 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
14 participation in the conduct alleged herein of Defendants sued as DOES 1-50, inclusive, but is
15 informed and believes and thereon alleges that said Defendants are legally responsible for the
16 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
17 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
18 when ascertained.

19 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
20 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
21 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
22 within the course and scope of such agency, employment, direction and control, and with the
23 approval and ratification of each of the other Defendants.

24 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
26 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
27 Members or otherwise complying with their rights in accordance with applicable California labor
28 laws as alleged herein.



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1 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
2 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
3 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
4 described class in accordance with applicable laws as alleged herein.

5 **III. CLASS ALLEGATIONS**

6 11. This action has been brought and may be maintained as a class action pursuant to
7 California Code of Civil Procedure section 382 because there is a well-defined community of
8 interest among the persons who comprise the readily ascertainable class defined below and
9 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
10 a class action.

11 12. **Class Definition:** The Class is defined as follows: All persons Defendants
12 employed in California as non-exempt, hourly employees, including, but not limited to, plumbers,
13 individuals performing work comparable to the aforementioned, compensated comparably to the
14 aforementioned, and individuals in similar positions, at any time during the period beginning four
15 years prior to the filing of this action and ending on the date that final judgment is entered in this
16 action (“Class” or “Class Members”).

17 13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
18 right to amend or modify the class definition with greater specificity, by further division into
19 subclasses and/or by limitation to particular issues.

20 14. **Numerosity:** The Class Members are so numerous that the individual joinder of
21 each individual Class Member is impractical. While Plaintiff does not currently know the exact
22 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
23 minimum required for numerosity under California laws.

24 15. **Commonality and Predominance:** Common questions of law and fact exist as to
25 all Class Members and predominate over any questions which affect only individual Class
26 Members. These questions include, but are not limited to:

27 A. Whether Defendants failed to pay all wages earned to Class Members for
28 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,



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meal period premium, rest period premium, and vacation wages;

B. Whether Defendants unlawfully deducted wages from Class Members;

C. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

D. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

E. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

G. Whether Defendants willfully failed to provide the class with timely final wages;

H. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

I. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

16. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of



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1 Plaintiff and absent Class Members.

2 19. **Superiority:** A class action is vastly superior to other available means for fair and
3 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
4 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
5 and efficiently prosecute their common claims in a single forum without the unnecessary
6 duplication of effort and expense that numerous individual actions would entail. In addition, the
7 monetary amounts due to many individual Class Members are likely to be relatively small and
8 would thus make it difficult, if not impossible, for individual Class Members to both seek and
9 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
10 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
11 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **IV. STATEMENT OF FACTS**

13 20. The Wage Order applies to "all persons employed in professional, technical,
14 mechanical, and similar occupations whether paid on a time, piece rate, commission, or other
15 basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical,
16 Mechanical, and Similar Occupations" to include

17 professional, semiprofessional, managerial, supervisory, laboratory, research,
18 technical, clerical, office work, and mechanical occupations. Said occupations
19 shall include, but not be limited to, the following: accountants; agents; appraisers;
20 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
21 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
22 sound technicians; compilers; copy holders; copy readers; copy writers; computer
23 programmers and operators; demonstrators and display representatives;
24 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
25 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
26 instructors; interviewers; investigators; librarians; laboratory workers; machine
27 operators; mechanics; mailers; messengers; medical and dental technicians and
28 technologists; models; nurses; packagers; photographers; porters and cleaners;
process servers; printers; proof readers; salespersons and sales agents; secretaries;
sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
and other related occupations listed as professional, semiprofessional, technical,
clerical, mechanical, and kindred occupations



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1 Wage Order, § 2(O). At all relevant times during the applicable limitations period, Defendants,
2 Bell, and all of the Class Members were covered by the Wage Order because Bell and all of the
3 Class Members worked for Defendants as plumbers, and other related occupations listed as
4 professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.
5 Accordingly, Bell and all of the other Class Members are entitled to the protections the Wage
6 Order provides.

7 21. On approximately May 5, 2023, Defendants began to employ Bell in California in
8 the position of Journeyman Plumber. Defendants continuously employed him in that capacity
9 until on or about July 10, 2025 when his employment ended.

10 22. At all relevant times, Defendants issued wages to Bell and all of the other Class
11 Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times,
12 Defendants classified Bell and all of the other Class Members as non-exempt employees entitled
13 to the protections of the Labor Code and the Wage Order.

14 23. At all relevant times, Defendants failed to compensate Bell and all of the other
15 Class Members for all hours worked at the applicable minimum or regular rates of pay.
16 Defendants failed to compensate Bell and all of the other Class Members for all hours worked at
17 the applicable minimum or regular rates of pay. Defendants required Bell and all of the other
18 Class Members to arrive at their job sites several minutes before their scheduled start time to set
19 up their tools and be ready to begin work at their scheduled start times. Defendants also often
20 required Bell and all of the other Class Members to continue working after their scheduled end
21 times to finish their assigned duties. Defendants, however, did not allow Bell and all of the other
22 Class Members to report this additional time on their handwritten timesheets and failed to
23 compensate them for all hours worked. Bell and all of the other Class Members were also often
24 interrupted during their meal periods and had to return to work if there were work emergencies.
25 On such occasions, Defendants required them to still report 30-minute meal periods on their
26 timesheets and deducted the full 30 minutes from their hours worked even if they took a meal
27 period of less than 30 minutes.

28 24. At all relevant times, Defendants failed to compensate Bell and all of the other



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1 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
2 week, and for the first eight hours of the seventh day of the workweek. James Jay Hanacek IV,
3 on different occasions, reminded Bell that they were not allowed to report overtime hours on their
4 timesheets unless such hours were authorized in advance. The unpaid hours described above often
5 resulted in unpaid overtime hours.

6 25. At all relevant times, Defendants failed to compensate Bell and all of the other
7 Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the
8 first eight of the seventh day of the workweek. The unpaid hours described above often resulted
9 in unpaid double-time hours.

10 26. At all relevant times, Defendants failed to provide Bell and all of the other Class
11 Members with all timely 30-minute, off-duty meal periods. Bell and all of the other Class
12 Members had to wait for their supervisor or foreman's permission before they could take meal
13 periods. Their supervisors often authorized the meal periods after Bell and the other Class
14 Members had already worked more than five (5) hours in a workday. As discussed above, Bell
15 and all of the other Class Members were also often interrupted during their meal periods and had
16 to take less than 30-minute, or on-duty, meal periods. Defendants also failed to provide Bell and
17 the Class Members with a second meal period when they worked more than 10 hours in a
18 workday. Defendants also failed to pay premium wages for days on which they failed to provide
19 Bell and all of the other Class Members with meal periods as required by law.

20 27. At all relevant times, Defendants failed to authorize and permit Bell and all of the
21 other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or
22 major portion thereof. Defendants also failed to pay premium wages for days on which they failed
23 to authorize and permit Bell and all of the other Class Members to take rest breaks as required by
24 law.

25 28. At all relevant times, Defendants failed to pay all earned, but unused vacation pay
26 to Bell and all of the other Class Members at their final rates of pay. Under the policies and
27 practices of Defendants, Bell and all of the other Class Members earned vacation pay during
28 employment. Under such policies, these accrued but unused forms of vacation pay were subject



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1 to forfeit at the conclusion of the employment relationship.

2 29. At all relevant times, Defendants required Bell and all of the other Class Members
3 to incur certain business expenses in the course of performing their duties. Defendants required
4 Bell and all of the other Class Members to supply their own tools, such as drills, saws, and
5 hammers, to perform their job duties. Defendants further required Bell and all of the other Class
6 Members to use their own personal cellphone to communicate with their managers, download the
7 software Procore to check drawings, schedules and to upload photos throughout their
8 employment. However, Defendants did not provide these items and did not reimburse Bell and
9 the other Class Members for these items.

10 30. At all relevant times, Defendants unlawfully deducted wages belonging to Bell
11 and all of the other Class Members. As discussed above, Defendants often provided Bell and the
12 Class Members with less than 30 minutes meal periods but deducted at least 30 minutes from
13 their hours worked.

14 31. At all relevant times, Defendants failed to issue to Bell and all of the other Class
15 Members complete and accurate wage statements that state all hours worked at the correct rates
16 of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage
17 statements they issued to Bell and all of the other Class Members the unpaid wages discussed
18 above. The wage statements fail to state all minimum wages earned, all regular wages earned, all
19 overtime wages earned, all double-time wages earned, all meal period premium wages earned, all
20 rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, start
21 date of pay period, all hourly rates, and other required information. The wage statements
22 Defendants issued to Bell and the Class Members were confusing on their face. For example,
23 Defendants listed the accrued and earned vacation time and sick time under “Hrs/Earning.” Many
24 of the wage statements also failed to state the rate of pay in the “Hrs/Earning” portion of wage
25 statement. The hourly rate of pay often only appeared on a separate sheet. Further, Defendants
26 failed to include the overtime rates of pay on the main wage statements or the accompanying
27 division sheet.

28 32. At all relevant times, Defendants also failed to timely pay Bell and all of the other



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1 Class Members all earned wages as described above during and at the conclusion of employment.

2 33. At all relevant times, Defendants failed to maintain accurate employee records of
3 Bell and all of the other Class Members. As discussed above, Defendants did not allow Bell and
4 the Class Members to record all their hours worked.

5 34. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
6 unlawful practices and policies, Plaintiff and the Class Members were:

- 7 A. Not provided with all off duty meal periods;
8 B. Not authorized and permitted to take all rest break periods;
9 C. Not paid one hour's pay for each workday in which Defendants failed to
10 authorize and permit them to take one or more timely rest periods;
11 D. Not paid one hour's pay for each workday in which Defendants failed to
12 provide them with one or more timely meal periods;
13 E. Not paid all wages earned, including, but not limited to, minimum, regular,
14 overtime, and doubletime wages for work performed while clocked out;
15 F. Not indemnified for all necessary business expenditures incurred during
16 the discharge of their duties;
17 G. Not provided with accurate and complete wage statements; and
18 H. Not timely paid all earned and unpaid wages at the time their employment
19 ended.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
22 **CORRECT RATES**

23 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

24 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

25 35. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 36. At all relevant times, Plaintiff and the Class Members have been non-exempt
27 employees entitled to the protections of both the Labor Code and the Wage Order.

28 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
THE CORRECT RATES OF PAY



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1 37. Section 2 of the Wage Order defines “hours worked” as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 38. Section 3 of the Wage Order states:

5 (A) Daily Overtime - General Provisions

6 (1) The following overtime provisions are applicable to
7 employees 18 years of age or over and to employees 16 or
8 17 years of age who are not required by law to attend
9 school and are not otherwise prohibited by law from
10 engaging in the subject work. Such employees shall not be
11 employed more than eight (8) hours in any workday or
12 more than 40 hours in any workweek unless the employee
13 receives one and one-half (1 ½) times such employee’s
14 regular rate of pay for all hours worked over 40 hours in
15 the workweek. Eight (8) hours of labor constitutes a day’s
16 work. Employment beyond eight (8) hours in any workday
17 or more than six (6) days in any workweek is permissible
18 provided the employee is compensated for such overtime
19 at not less than:

20 (a) One and one-half (1 ½) times the employee’s
21 regular rate of pay for all hours worked in excess of
22 eight (8) hours up to and including 12 hours in any
23 workday, and for the first eight (8) hours worked on
24 the seventh (7th) consecutive day of work in a
25 workweek.

26 (b) Double the employee’s regular rate of pay for all
27 hours worked in excess of 12 hours in any workday
28 and for all hours worked in excess of eight (8) hours
on the seventh (7th) consecutive day of work in a
workweek.

 (c) The overtime rate of compensation required to be
paid to a nonexempt full-time salaried employee
shall be computed by using the employee’s regular
hourly salary as one-fortieth (1/40) of the
employee’s weekly salary.

 39. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that



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1 an employer has actual or constructive knowledge that employees are working.

2 40. Labor Code section 510 states:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
4 in one workday and any work in excess of 40 hours in any one workweek and the
5 first eight hours worked on the seventh day of work in any one workweek shall be
6 compensated at the rate of no less than one and one-half times the regular rate of
7 pay for an employee. Any work in excess of 12 hours in one day shall be
8 compensated at the rate of no less than twice the regular rate of pay for an
9 employee. In addition, any work in excess of eight hours on any seventh day of a
10 workweek shall be compensated at the rate of no less than twice the regular rate of
11 pay of an employee. Nothing in this section requires an employer to combine more
12 than one rate of overtime compensation in order to calculate the amount to be paid
13 to an employee for any hour of overtime work.

14 41. Labor Code section 1194 invalidates any agreement between an employer and an
15 employee to work for less than the minimum wage required under the applicable Wage Order.

16 42. Labor Code section 1197 makes it unlawful for an employer to pay an employee
17 less than the minimum wage required under the applicable Wage Order for all hours worked
18 during a payroll period.

19 43. Labor Code section 1198 makes it unlawful for an employer to employ an
20 employee under conditions that violate the Wage Order.

21 44. In conjunction, these provisions of the Labor Code require employers to pay non-
22 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
23 worked, including unrecorded hours when the employer knew or reasonably should have known
24 that employees were working during those hours. See *Morillion v. Royal Packing Co.* (2000) 22
25 Cal.4th 575, 585.

26 45. As discussed above, at all relevant times during the applicable limitations period,
27 Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including,
28 but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular,
overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



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1 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
2 rates of pay as required by California law.

3 47. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
4 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
5 the full amount of wages earned during each pay period during the applicable limitations period.

6 48. As a result of Defendants' conduct, Plaintiff, on behalf of himself and the Class,
7 seeks damages and/or restitution for all earned wages which Defendants failed to pay them at the
8 correct rates of pay, interest thereon, costs of suit and reasonable attorney's fees pursuant to
9 California Labor Code § 1194.

10 49. In addition, pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and the
11 Class, seeks to recover unpaid hourly and minimum wages, liquidated damages in amounts equal
12 to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys'
13 fees, all in amounts subject to proof.

14 **B. UNLAWFUL WAGE DEDUCTIONS**

15 50. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
16 receive from an employee any part of wages theretofore paid by said employer to said employee."
17 Defendants deducted wages from the wages earned by Bell and all of the other Class Members
18 for hours spent working or in on-duty meal periods in violation of Labor Code § 221.

19 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
21 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
22 law.

23 **C. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
24 **LABOR CODE**

25 52. In relevant part, Labor Code section 558.1 states:

- 26 (a) Any employer or other person acting on behalf of an employer,
27 who violates, or causes to be violated, any provision regulating
28 minimum wages or hours and days of work in any order of the
Industrial Welfare Commission, or violates, or causes to be
violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be



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held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of Bell and all of the other Class Members, and/or “owners,” “managing agents,” and/or “officers” of Defendants. They directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Bell seeks the same civil penalties against Walter Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil penalties against the rest of Defendants.

SECOND CAUSE OF ACTION

VACATION PAY FORFEITURE

Lab. Code § 227.3

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

54. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having fully utilized his vested vacation time, all vested vacation must be paid to the employee at his final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. In addition, the statute prohibits an employment contract or employer policy from providing for forfeiture of such vested vacation time upon an employee’s termination of employment, regardless of the reason for termination. See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, (183 Cal.Rptr. 846, 646 P.2d 122 (1982)).

55. The California Supreme Court has examined the terms under which an employee



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1 acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court
2 concluded that a “proportionate right to a paid vacation ‘vests’ as the labor is rendered.” Thus, an
3 employee is entitled to a pro rata share of vacation pay upon termination of employment even
4 though he has not completed all of the service requirements specified in the employer’s policy or
5 plan.

6 56. An employer should never, by reason of the employee’s termination, attempt to
7 divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested
8 interest pursuant to the terms of the employer’s policy or agreement.

9 57. A vacation policy that provides for the forfeiture of vacation pay that is not used
10 by a specified date, such as an employee’s anniversary date, is impermissible under California
11 law. Courts have held that such “use-it-or-lose-it policies” result in forfeitures of vested vacation
12 pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit
13 employees to carry over vacation time from one year to the next and do not allow employees to
14 receive vacation pay in lieu of taking vacation time off.

15 58. The DLSE’s enforcement policy permits employers to exclude employees from a
16 vacation policy during a specified period of time at the beginning of employment. This could
17 apply to a probationary or introductory period or even the first year of employment. If the policy
18 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
19 from the employer for any reason during the probationary period or “initial employment.”
20 (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
21 recognized only if it is not found to be a “subterfuge.” The Division will deem a subterfuge to
22 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
23 if a policy provides that employees do not earn any vacation during their first year of employment,
24 but earn four weeks’ vacation during the second year and are reduced to two weeks’ vacation the
25 third year, the Division will contend that the policy involves a subterfuge. This is based on the
26 Division’s position that the policy, when viewed as a whole, makes it clear that two of the four
27 weeks’ vacation attributed to the second year are actually earned in the first years. In a case where
28 such a subterfuge is found, employees who separate during the so-called “waiting period” (i.e.,



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1 the first year of employment in the example) will be entitled to prorated vacation pay.

2 59. The Division takes the position that vacation pay for a terminating employee must
3 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
4 separation. See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
5 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
6 Reyff (Oct. 28, 1986).

7 60. Defendants maintained vacation pay policies and practices with accrual
8 components that violate Labor Code § 227.3 based on the California Supreme Court's decision
9 in *Suastez v. Plastic Dress-Up Co.*, supra. Defendants' vacation policy fails to provide for
10 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
11 their vested rights to vacation pay. Under the policies and practices of Defendants, Bell and all of
12 the other Class Members earned vacation pay during employment. Under such policies, these
13 accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the
14 employment relationship. Consequently, the Class Members are entitled to recover vacation pay.

15 61. In *Suastez*, the defendant-employer "refused to pay vacation benefits to anyone
16 whose employment was terminated before . . . [his or her employment] anniversary date" and
17 refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
18 between his last employment anniversary date and his termination date. *Id.* at 776–77. In finding
19 for the plaintiff-employee, the Court held that "a proportionate right to a paid vacation 'vests' as
20 the labor is rendered" and that Labor Code § 227.3 protects that right from forfeiture. *Id.* at 784.

21 62. It is especially worth noting that, in rejecting the contention that the plaintiff-
22 employee had no vested right to vacation pay until his anniversary date, the Court specifically
23 stated: "The right to some share of vacation pay vests, like pension rights, on acceptance of
24 employment. Nonperformance of a condition subsequent, such as [defendant-employer's]
25 requirement that employees remain until their anniversary, can, at most, result in a forfeiture of
26 the right to a vacation; *it cannot prevent that right from vesting.*" *Id.* at 780–81, (italics added).

27 63. Defendants did not pay Plaintiff or the Class Members at the time they were
28 terminated for any unused but accrued vacation days and the like. Defendants had the ability to



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1 provide Plaintiff and the Class Members payment for their accrued but unused vacation days and
2 similar compensation but intentionally failed to pay Plaintiff and the Class Members.

3 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to pay Plaintiff and the other Class Members vacation wages as required by California
6 law.

7 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
8 **LABOR CODE**

9 65. In relevant part, Labor Code section 558.1 states:

10 (c) Any employer or other person acting on behalf of an employer,
11 who violates, or causes to be violated, any provision regulating
12 minimum wages or hours and days of work in any order of the
13 Industrial Welfare Commission, or violates, or causes to be
14 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
15 held liable as the employer for such violation.

16 (d) For purposes of this section, the term "other person acting on
17 behalf of an employer" is limited to a natural person who is an
18 owner, director, officer, or managing agent of the employer, and
19 the term "managing agent" has the same meaning as in subdivision
20 (b) of Section 3294 of the Civil Code.

21 At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of
22 Bell and all of the other Class Members, and/or "owners," "managing agents," and/or "officers"
23 of Defendants. They directly or indirectly, or through an agent or other person, employed and
24 exercised control over the wages, hours, and/or working conditions of the Class Members, and
25 caused the violations to the Labor Code and the Wage Order described above. On behalf of
26 himself and all of the other Class Members, Bell seeks the same civil penalties against Walter
27 Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil
28 penalties against the rest of Defendants.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, and 1198

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

66. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

67. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

68. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

69. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the



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1 employee is relieved of all duty during a 30 minute meal period,
2 the meal period shall be considered an “on duty” meal period and
counted as time worked. . . .

- 3 (B) If an employer fails to provide an employee a meal period in
4 accordance with the applicable provisions of this Order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee’s regular rate of compensation for each workday that the
meal period is not provided.

7 71. In relevant part, California Labor Code § 226.7 states:

- 8 (b) An employer shall not require an employee to work during
9 a meal or rest period mandated pursuant to an applicable
10 statute, or applicable regulation, standard, or order of the
11 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

- 12 (c) If an employer fails to provide an employee a meal period
13 or rest period in accordance with a state law, including, but
14 not limited to, an applicable statute or applicable
15 regulation, standard, or order of the Industrial Welfare
16 Commission, the Occupational Safety and Health
17 Standards Board, or the Division of Occupational Safety
18 and Health, the employer shall pay the employee one
additional hour of pay at the employee’s regular rate of
compensation for each work day that the meal or rest
period is not provided.

19 72. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
20 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
21 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
22 to a second 30-minute meal period when they worked more than 10 hours in a workday.

23 73. Defendants intentionally failed to provide Plaintiff and the Class Members with
24 all required 30-minute duty free meal periods in accordance with the Wage Order.

25 74. As discussed above, at all relevant times, Defendants failed to provide Plaintiff
26 and the Class Members with all timely, duty-free meal periods. Furthermore, Defendants failed
27 to pay premium wages for days on which they failed to provide Plaintiff and the other Class
28



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Members with timely meal periods.

75. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

76. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

77. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

78. In relevant part, Labor Code section 558.1 states:

- (e) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (f) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of Bell and all of the other Class Members, and/or "owners," "managing agents," and/or "officers" of Defendants. They directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Bell seeks the same civil penalties against Walter



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Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil penalties against the rest of Defendants.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

79. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

80. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

81. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

82. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

83. In relevant part, California Labor Code § 226.7 states:



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1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
5 and Health Standards Board, or the Division of
6 Occupational Safety and Health.

7 (c) If an employer fails to provide an employee a meal period
8 or rest period in accordance with a state law, including, but
9 not limited to, an applicable statute or applicable
10 regulation, standard, or order of the Industrial Welfare
11 Commission, the Occupational Safety and Health
12 Standards Board, or the Division of Occupational Safety
13 and Health, the employer shall pay the employee one
14 additional hour of pay at the employee's regular rate of
15 compensation for each work day that the meal or rest
16 period is not provided.

17 84. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
18 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
19 of work, or major fraction thereof.

20 85. As discussed above, at all relevant times, Defendants failed to authorize and permit
21 Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours
22 worked or major fraction thereof. Furthermore, Defendants failed to pay premium wages to
23 Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff
24 and the other Class Members to take timely rest periods.

25 86. Defendants did not seek an exemption from the rest period protections of the Wage
26 Order from the California Division of Labor Standards Enforcement. Moreover, Defendants
27 failed to pay Plaintiff and the Class Members premium wages on workdays they failed to
28 authorize and permit them to take 10-minute rest periods every four hours worked or major
fraction thereof.

87. Defendants intentionally failed to authorize and permit Plaintiff and the Class
Members to take all 10-minute rest periods free from any work duties in accordance with the
Wage Order.



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1 88. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
4 take all rest breaks required by California law.

5 89. Defendants failed to provide Plaintiff with all required rest breaks in accordance
6 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
7 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
8 which resulted in Defendants not providing the Class Members with all rest breaks required by
9 California law.

10 90. Defendants failed to pay Plaintiff the additional wages required by California
11 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
12 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
13 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
14 Class Members with additional wages for all rest breaks not provided to them as required by
15 California Labor Code § 226.7.

16 91. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
17 suffered damages in amounts subject to proof to the extent they were not paid additional wages
18 owed for all rest breaks not provided to them.

19 92. By reason of the above, Plaintiff and the Class Members are entitled to premium
20 wages for workdays in which one or more rest breaks were not provided to them pursuant to
21 California Labor Code § 226.7.

22 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
23 **LABOR CODE**

24 93. In relevant part, Labor Code section 558.1 states:

- 25 (g) Any employer or other person acting on behalf of an employer,
26 who violates, or causes to be violated, any provision regulating
27 minimum wages or hours and days of work in any order of the
28 Industrial Welfare Commission, or violates, or causes to be
violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.



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1 (h) For purposes of this section, the term “other person acting on
2 behalf of an employer” is limited to a natural person who is an
3 owner, director, officer, or managing agent of the employer, and
4 the term “managing agent” has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

5 At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of
6 Bell and all of the other Class Members, and/or “owners,” “managing agents,” and/or “officers”
7 of Defendants. They directly or indirectly, or through an agent or other person, employed and
8 exercised control over the wages, hours, and/or working conditions of the Class Members, and
9 caused the violations to the Labor Code and the Wage Order described above. On behalf of
10 himself and all of the other Class Members, Bell seeks the same civil penalties against Walter
11 Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil
12 penalties against the rest of Defendants.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO INDEMNIFY**

15 **Lab. Code §§ 1198 and 2802**

16 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

17 94. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

18 95. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
19 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties.”

21 96. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 97. As described above, at all relevant times, Defendants required Plaintiff and the
24 Class Members to incur certain business expenses in the course of performing their duties.
25 However, Defendants did not reimburse Bell and the other Class Members for these items.

26 98. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
28 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



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1 during the course of performing their duties.

2 99. By reason of the above, Plaintiff and the members of the class are entitled to
3 reimbursement for all necessary expenditures and losses and interest due and owing to within four
4 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
5 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
6 class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).

7 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
8 **LABOR CODE**

9 100. In relevant part, Labor Code section 558.1 states:

- 10 (i) Any employer or other person acting on behalf of an employer,
11 who violates, or causes to be violated, any provision regulating
12 minimum wages or hours and days of work in any order of the
13 Industrial Welfare Commission, or violates, or causes to be
14 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
15 held liable as the employer for such violation.
- 16 (j) For purposes of this section, the term "other person acting on
17 behalf of an employer" is limited to a natural person who is an
18 owner, director, officer, or managing agent of the employer, and
19 the term "managing agent" has the same meaning as in subdivision
20 (b) of Section 3294 of the Civil Code.

21 At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of
22 Bell and all of the other Class Members, and/or "owners," "managing agents," and/or "officers"
23 of Defendants. They directly or indirectly, or through an agent or other person, employed and
24 exercised control over the wages, hours, and/or working conditions of the Class Members, and
25 caused the violations to the Labor Code and the Wage Order described above. On behalf of
26 himself and all of the other Class Members, Bell seeks the same civil penalties against Walter
27 Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil
28 penalties against the rest of Defendants.

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SIXTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226 and 226.2

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

102. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;

G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

103. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor



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Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

104. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

105. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above).

106. Defendants’ failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage



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1 statements that Defendants knew were not accurate.

2 107. As a result of being provided with inaccurate wage statements by Defendants,
3 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
4 wage statements were violated and they were misled about the amount of wages they had actually
5 earned and were owed. In addition, the absence of accurate information on their wage statements
6 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
7 and mathematical computations to determine the amounts of wages owed, has caused difficulty
8 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
9 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
10 and the other Class Members were not able to ascertain from the wage statements whether
11 Defendants complied with their obligations under California Labor Code section 226(a).

12 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
13 **LABOR CODE**

14 108. In relevant part, Labor Code section 558.1 states:

- 15 (k) Any employer or other person acting on behalf of an employer,
16 who violates, or causes to be violated, any provision regulating
17 minimum wages or hours and days of work in any order of the
18 Industrial Welfare Commission, or violates, or causes to be
19 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
20 held liable as the employer for such violation.
- 21 (l) For purposes of this section, the term "other person acting on
22 behalf of an employer" is limited to a natural person who is an
23 owner, director, officer, or managing agent of the employer, and
24 the term "managing agent" has the same meaning as in subdivision
25 (b) of Section 3294 of the Civil Code.

26 At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of
27 Bell and all of the other Class Members, and/or "owners," "managing agents," and/or "officers"
28 of Defendants. They directly or indirectly, or through an agent or other person, employed and
exercised control over the wages, hours, and/or working conditions of the Class Members, and
caused the violations to the Labor Code and the Wage Order described above. On behalf of



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1 himself and all of the other Class Members, Bell seeks the same civil penalties against Walter
2 Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil
3 penalties against the rest of Defendants.

4 **SEVENTH CAUSE OF ACTION**

5 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

6 **(Lab. Code §§ 201, 202, and 203)**

7 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

8 109. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 110. At all relevant times during the applicable limitations period, Plaintiffs and the
10 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
11 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

12 111. Labor Code § 201 provides that all earned and unpaid wages of an employee who
13 is discharged are due and payable immediately at the time of discharge.

14 112. Labor Code § 202 provides that all earned and unpaid wages of an employee who
15 quits after providing at least 72-hours notice before quitting are due and payable at the time of
16 quitting and that all earned and unpaid wages of an employee who quits without providing at least
17 72-hours notice before quitting are due and payable within 72 hours.

18 113. Defendants failed to pay Bell and all of the other Class Members whose
19 employment ended all of the earned but unpaid wages described above by the conclusion of their
20 employment with Bell, including minimum wages, regular wages, overtime wages, doubletime
21 wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted
22 wages, vacation pay, and related compensation.

23 114. By failing to pay such earned wages to Plaintiff and the Class Members,
24 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
25 § 201 or § 202.

26 115. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
27 and the Class Members all of their earned and unpaid wages (described above) have been willful
28 in that, at all relevant times, Defendants have deliberately maintained policies and practices that



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1 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
2 they have had the ability to comply with those legal requirements.

3 116. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
4 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
5 penalties for each Class Member.

6 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
7 **LABOR CODE**

8 117. In relevant part, Labor Code section 558.1 states:

9 (m) Any employer or other person acting on behalf of an employer,
10 who violates, or causes to be violated, any provision regulating
11 minimum wages or hours and days of work in any order of the
12 Industrial Welfare Commission, or violates, or causes to be
13 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
14 held liable as the employer for such violation.

15 (n) For purposes of this section, the term “other person acting on
16 behalf of an employer” is limited to a natural person who is an
17 owner, director, officer, or managing agent of the employer, and
18 the term “managing agent” has the same meaning as in subdivision
19 (b) of Section 3294 of the Civil Code.

20 At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of
21 Bell and all of the other Class Members, and/or “owners,” “managing agents,” and/or “officers”
22 of Defendants. They directly or indirectly, or through an agent or other person, employed and
23 exercised control over the wages, hours, and/or working conditions of the Class Members, and
24 caused the violations to the Labor Code and the Wage Order described above. On behalf of
25 himself and all of the other Class Members, Bell seeks the same civil penalties against Walter
26 Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil
27 penalties against the rest of Defendants.

28 ///

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EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

118. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

119. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

120. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

121. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages, missed meal period premium wages, missed rest period premium wages, business expenses, unlawfully deducted wages, and comparable money and property.

122. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

123. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

124. In relevant part, Labor Code section 558.1 states:



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(o) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(p) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of Bell and all of the other Class Members, and/or “owners,” “managing agents,” and/or “officers” of Defendants. They directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Bell seeks the same civil penalties against Walter Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil penalties against the rest of Defendants.

NINTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

**(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,
against all Defendants)**

125. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

126. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning June 15, 2025, and ending on the date that final judgment is entered in this action.

127. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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



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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. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) 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.

128. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

129. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198, and 2802.

130. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

131. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars



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1 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
2 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
3 (penalty amounts established by California Labor Code § 210).

4 B. For violations of California Labor Code § 221, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial violation of Labor Code § 221, and two
6 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent violation, or any
7 willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld
8 from each aggrieved employee (penalties set by Labor Code § 225.5)

9 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
10 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
11 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
12 California Labor Code § 226.3); Alternatively, one hundred dollars (\$100) for each aggrieved
13 employee per pay period; Alternatively, twenty-five dollars (\$25) for each aggrieved employee
14 per pay period if the employee could promptly and easily determine from the wage statement
15 alone the accurate information specified by subdivision (a) of Section 226; and Alternatively,
16 fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted
17 from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days
18 or four consecutive pay periods.

19 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
20 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
21 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
22 established by California Labor Code § 558).

23 E. For violations of California Labor Code § 1174, five hundred dollars
24 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
25 amounts established by Labor Code § 1174.5).

26 F. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
28 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period



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(regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 227.3, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

132. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated June 15, 2026, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated June 15, 2026 is attached as Exhibit A. Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

133. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

134. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, double-time, split



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1 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
2 time, and reporting time wages;

3 E. Liquidated damages;

4 F. Statutory penalties, including waiting time penalties;

5 G. Restitution;

6 H. Civil penalties;

7 I. Declaratory relief;

8 J. Actual damages;

9 K. Pre-judgment interest;

10 L. Costs of suit;

11 M. Reasonable attorneys' fees; and

12 N. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
15 on all issues so triable.

16
17 Respectfully submitted,

18 THE SPIVAK LAW FIRM

19 Dated: August 26, 2026

20 By:



21 DAVID G. SPIVAK, Attorneys for
22 Plaintiff, KEVIN BELL, and all others
23 similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

June 15, 2026

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Kevin Bell / American Plumbing Systems, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.*, Kevin Bell (hereafter “Bell” or “Complainant”) provides notice that American Plumbing Systems, Inc., a California corporation, Walter Jacob Kuhlman, III, a natural person, James Jay Hanacek IV, a natural person, and related entities (collectively “the APSI Employers” or “APSI”) violated his rights and those of all other individuals the APSI Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, including, but not limited to, plumbers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 227.3, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Bell hereby provides this notice to the Labor & Workforce Development Agency and the APSI Employers and their agents and representatives.

At all relevant times, the APSI Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies throughout California. Bell and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), section 2, subdivision (F), and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

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Statement of Facts

On or about May 5, 2023, the APSI Employers began to employ Bell in California in the position of Journeyman Plumber. The APSI Employers continuously employed Bell in that capacity until on or about July 10, 2025, when his employment ended.

At all relevant times, the APSI Employers issued wages to Bell and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the APSI Employers classified Bell and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The APSI Employers required Bell and all of the other Aggrieved Employees to arrive at their job sites several minutes before their scheduled start time to set up their tools and be ready to begin work at their scheduled start times. The APSI Employers also often required Bell and all of the other Aggrieved Employees to continue working after their scheduled end times to finish their assigned duties. The APSI Employers, however, did not allow Bell and all of the other Aggrieved Employees to report this additional time on their handwritten timesheets and failed to compensate them for all hours worked. Bell and all of the other Aggrieved Employees were also often interrupted during their meal periods and had to return to work if there were work emergencies. On such occasions, the APSI Employers required them to still report 30-minute meal periods on their timesheets and deducted the full 30 minutes from their hours worked even if they took a meal period of less than 30 minutes.

The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. James Jay Hanacek IV, on different occasions, reminded Bell that they were not allowed to report overtime hours on their timesheets unless such hours were authorized in advance. The unpaid hours described above often resulted in unpaid overtime hours.

The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all hours worked over the first eight hours of the seventh day of the workweek. The unpaid hours described above often resulted in unpaid double-time hours.

At all relevant times, the APSI Employers failed to provide Bell and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Bell and all of the other Aggrieved Employees had to wait for their supervisor or foreman's permission before they could take meal periods. Their supervisors often authorized the meal periods after Bell and the other Aggrieved Employees had already worked more than five (5) hours in a workday. As discussed above, Bell and all of the other Aggrieved Employees were also often interrupted during their meal periods and had to take less than 30-minute, or on-duty, meal periods. The APSI Employers also failed to provide Bell and the Aggrieved Employees with a second meal period when they worked more than 10 hours in a workday. The APSI Employers also failed to pay premium wages for days on which they failed to provide Bell and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the APSI Employers failed to authorize and permit Bell and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The APSI Employers also failed to pay premium wages for days on which they failed to authorize and permit Bell and all of the other Aggrieved Employees to take rest breaks as required by law.

The APSI Employers failed to pay all earned but unused vacation pay to Bell and all of the other Aggrieved Employees at their final rates of pay. Under such policies, these accrued but unused forms of vacation pay were subject to forfeiture at the conclusion of the employment relationship.

At all relevant times, the APSI Employers required Bell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The APSI Employers required Bell and all of the other Aggrieved Employees to supply their own tools, such as drills, saws, and hammers, to perform their job duties. The APSI Employers further required Bell and all of the other Aggrieved Employees to use their own personal cellphone to communicate with their managers, download the software Procore to check drawings, schedules and to upload photos throughout their employment. However, the APSI Employers did not provide these items and did not reimburse Bell and the other Aggrieved Employees for these items.

The APSI Employers unlawfully deducted wages belonging to Bell and all of the other Aggrieved Employees. As discussed above, APSI Employers often provided Bell and

the Aggrieved Employees with less than 30 minutes meal periods but deducted at least 30 minutes from their hours worked.

At all relevant times, the APSI Employers failed to issue to Bell and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The APSI Employers knowingly and intentionally failed to state on the wage statements they issued to Bell and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all double-time wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, start date of pay period, all hourly rates, and other required information. The wage statements APSI Employers issued to Bell and the Aggrieved Employees were confusing on their face. For example, APSI Employers listed the accrued and earned vacation time and sick time under “Hrs/Earning.” Many of the wage statements also failed to state the rate of pay in the “Hrs/Earning” portion of wage statement. The hourly rate of pay often only appeared on a separate sheet. Further, APSI Employers failed to include the overtime rates of pay on the main wage statements or the accompanying division sheet.

The APSI Employers also failed to timely pay Bell and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The APSI Employers failed to maintain accurate employee records of Bell and all of the other Aggrieved Employees. As discussed above, the APSI Employers did not allow Bell and the Aggrieved Employees to record all their hours worked.

For the reasons stated herein, Bell alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The APSI Employers failed to pay Bell and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and double-time wages;
- (b) The APSI Employers failed to pay all earned but unused vacation pay to Bell and all of the other Aggrieved Employees at their final rates of pay;

- (c) The APSI Employers failed to provide Bell and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (d) The APSI Employers failed to authorize and permit Bell and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (e) The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees at one hour's pay for each day in which the APSI Employers failed to provide them with one or more meal periods as required by law;
- (f) The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees at one hour's pay for each day in which the APSI Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (g) The APSI Employers failed to indemnify Bell and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The APSI Employers unlawfully deducted wages belonging to Bell and all of the other Aggrieved Employees;
- (i) The APSI Employers knowingly and intentionally failed to provide Bell and all of the other Aggrieved Employees with complete and accurate wage statements;
- (j) The APSI Employers willfully failed to timely pay Bell and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the APSI Employers and when their employment ended; and
- (k) The APSI Employers failed to maintain accurate employment records pertaining to Bell and all of the other Aggrieved Employees.

Accordingly, Bell now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the APSI Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in professional, technical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Professional, Technical, Clerical, Mechanical, and Similar Occupations” to include

professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; door-keepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radiotelephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations

Wage Order, § 2(O). At all relevant times during the applicable limitations period, the APSI Employers, Bell, and all of the Aggrieved Employees were covered by the Wage Order because the APSI Employers operated, and Bell, and all of the Aggrieved Employees, worked for the APSI Employers as plumbers, and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and

kindred occupations. Accordingly, Bell and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, 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.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

As discussed above, at all relevant times during the applicable limitations period, the APSI Employers failed to compensate Bell and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and double-time wages for all hours they worked at the correct rates of pay. Accordingly,

Bell now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Forfeiture of Vacation Pay
(Lab. Code § 227.3)

Section 227.3 of the Labor Code states that, unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having fully utilized his vested vacation time, all vested vacation must be paid to the employee at his final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. In addition, the statute prohibits an employment contract or employer policy from providing for forfeiture of such vested vacation time upon an employee's termination of employment, regardless of the reason for termination. (See *Snastex v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

The California Supreme Court has examined the terms under which an employee acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court concluded that a “proportionate right to a paid vacation ‘vests’ as the labor is rendered.” Thus, an employee is entitled to a pro rata share of vacation pay upon termination of employment even though he has not completed all of the service requirements specified in the employer’s policy or plan.

An employer should never, by reason of the employee’s termination, attempt to divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested interest pursuant to the terms of the employer’s policy or agreement.

A vacation policy that provides for the forfeiture of vacation pay that is not used by a specified date, such as an employee’s anniversary date, is impermissible under California law. Courts have held that such “use-it-or-lose-it policies” result in forfeitures of vested vacation pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit employees to carry over vacation time from one year to the next and do not allow employees to receive vacation pay in lieu of taking vacation time off.

The DLSE’s enforcement policy permits employers to exclude employees from a vacation policy during a specified period of time at the beginning of employment. This could apply to a probationary or introductory period or even the first year of employment. If the policy is properly drafted, employees will not be entitled to prorated vacation benefits if they separate from the employer for any reason during the probationary period or “initial employment.” (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be recognized only if it is not found to be a “subterfuge.” The Division will deem a subterfuge to exist if vacation benefits are implicitly earned or accrued during the waiting period. For example, if a policy provides that employees do not earn any vacation during their first year of employment, but earn four weeks’ vacation during the second year and are reduced to two weeks’ vacation the third year, the Division will contend that the policy involves a subterfuge. This is based on the Division’s position that the policy, when viewed as a whole, makes it clear that two of the four weeks’ vacation attributed to the second year are actually earned in the first years. In a case where such a subterfuge is found, employees who separate during the so-called “waiting period” (i.e., the first year of employment in the example) will be entitled to prorated vacation pay.

The Division takes the position that vacation pay for a terminating employee must be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date

of the separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J. Reyff (Oct. 28, 1986).)

The APSI Employers maintained vacation pay policies and practices with accrual components that violate Labor Code § 227.3 based on the California Supreme Court's decision in *Suastez v. Plastic Dress-Up Co.*, supra. The APSI Employers' vacation policy fails to provide for proportionate vacation pay accruals as employees render labor and causes employees to forfeit their vested rights to vacation pay. Under the policies and practices of the APSI Employers, Bell and all of the other Aggrieved Employees earned vacation pay. Under such policies, these accrued but unused forms of vacation pay were subject to forfeiture at the conclusion of the employment relationship. Consequently, the Aggrieved Employees are entitled to recover vacation pay.

In *Suastez*, the defendant-employer “refused to pay vacation benefits to anyone whose employment was terminated before . . . [his or her employment] anniversary date” and refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding for the plaintiff-employee, the Court held that “a proportionate right to a paid vacation ‘vests’ as the labor is rendered” and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

It is especially worth noting that, in rejecting the contention that the plaintiff-employee had no vested right to vacation pay until his anniversary date, the Court specifically stated: “The right to some share of vacation pay vests, like pension rights, on acceptance of employment. Nonperformance of a condition subsequent, such as [defendant-employer’s] requirement that employees remain until their anniversary, can, at most, result in a forfeiture of the right to a vacation; *it cannot prevent that right from vesting.*” (*Id.* at 780–81, (italics added).)

Like the vacation pay policy the Court rejected in *Suastez*, the APSI Employers' vacation pay policies also fail to provide for proportionate accruals. Accordingly, Bell now seeks civil penalties for these Labor Code violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 227.3, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As discussed above, at all relevant times, the APSI Employers failed to provide Bell and all of the other Aggrieved Employees with all timely meal periods. Furthermore, the APSI Employers failed to pay premium wages for days on which they failed to provide Bell and all of the other Aggrieved Employees with timely meal periods. Accordingly, Bell now seeks civil penalties for these Labor Code violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent

violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As discussed above, at all relevant times, APSI Employers failed to authorize and permit Bell and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The APSI Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the APSI Employers failed to pay Bell and all of the other Aggrieved Employees premium wages on workdays the APSI Employers failed to provide Bell and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Bell now seeks civil penalties for these Labor Code violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2));
and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the APSI Employers required Bell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. However, the APSI Employers did not reimburse Bell and the other Aggrieved Employees for these items. Accordingly, Bell seeks civil penalties for these Labor Code

violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, at all relevant times, the APSI Employers deducted wages from the wages earned by Bell and all of the other Aggrieved Employees for hours spent working or in on-duty meal periods in violation of Labor Code § 221. Accordingly, Bell seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment

- of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
 4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
 5. Net wages earned;
 6. The inclusive dates of the period for which the employee is paid;
 7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
 8. The name and address of the legal entity that is the employer; and
 9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the APSI Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The APSI Employers failed to state in the wage statements they issued to Bell and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The APSI Employers knowingly and intentionally failed to state on the wage statements they issued to Bell and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all double-time wages earned, all meal period premium wages earned, all rest break premium wages

earned, all unlawfully deducted wages, all earned vacation pay, all earned sick pay, start date of pay period, all hourly rates, and other required information.

Labor Code § 2699(f)(2)(A) states:

- (i) If, at the time of the alleged violation, the person employs one or more employees, and the alleged violation is a violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226, the only civil penalty applicable under this part is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226 [failure to state the name and address of the legal entity that is the employer], the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer. This subdivision does not apply if the employer has failed to provide an itemized payroll statement during any of the pay periods at issue.
- (ii) The civil penalty is fifty (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Accordingly, Bell seeks civil penalties for the Labor Code violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows:

- (1) \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3);
- (2) Alternatively, one hundred dollars (\$100) for each aggrieved employee per pay period;

- (3) Alternatively, twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226; and
- (4) Alternatively, fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, double-time wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, vacation pay, and other compensation, at the intervals stated above. As a result, the APSI Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Bell now seeks civil penalties for the Labor Code violations that the APSI Employers have committed against Bell and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The APSI Employers failed to pay Bell and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Bell, including minimum wages, regular wages, overtime wages, double-time wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, vacation pay, and other compensation. Additionally, the APSI Employers failed to issue to Bell and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Bell and all of the other Aggrieved Employees as set forth above at the end of employment, the APSI Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Bell seeks civil penalties from the APSI Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200

per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (a) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation, and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The APSI Employers failed to compensate Bell and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all double-time wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned vacation pay, start date of pay period, all hourly rates, and related compensation. As a result, the APSI Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Bell and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Bell seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

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Re: Kevin Bell

June 15, 2026

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At all relevant times, Walter Jacob Kuhlman, III and James Jay Hanacek IV were employers of Bell and all of the other Aggrieved Employees, and/or “owners,” “managing agents,” and/or “officers” of the APSI Employers. They directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Bell seeks the same civil penalties against Walter Jacob Kuhlman, III and James Jay Hanacek IV on the same grounds for which he seeks civil penalties against the rest of the APSI Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Kevin Bell will seek both reasonable attorneys’ fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Caroline Tahmassian, Esq.
caroline@spivaklaw.com

cc: David Spivak, Esq.
Kevin Bell

Craig A. Diamond Esq.
Diamond Baker Avansino, LLP
149 Crown Point Court Suite B
Grass Valley, CA 95945-9551
cdiamond@diamondbaker.com

American Plumbing Systems, Inc.
c/o Sheila Lamb Carroll, Esq.
Carroll & Associates, PC
3600 American River Drive Suite 205

LWDA / The APSI Employers

Re: Kevin Bell

June 15, 2026

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Sacramento, CA 95864

scarroll@thecarrollfirm.com

Walter Jacob Kuhlman, III

c/o Sheila Lamb Carroll, Esq.

Carroll & Associates, PC

3600 American River Drive Suite 205

Sacramento, CA 95864

scarroll@thecarrollfirm.com

James Jay Hanacek IV

c/o Sheila Lamb Carroll, Esq.

Carroll & Associates, PC

3600 American River Drive Suite 205

Sacramento, CA 95864

scarroll@thecarrollfirm.com

1 **PROOF OF SERVICE**

2 State of California,
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 1875 Century Park East, FL
7 7, Los Angeles, CA 90067.

8 2. I am familiar with the practice of The Spivak Law Firm, for
9 collection and processing of correspondence for mailing with the United States
10 Postal Service. It is the practice that correspondence is deposited with the
11 United States Postal Service the same day it is submitted for mailing.

12 On Wednesday, August 26, 2026, I served the foregoing document described
13 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
14 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
15 addressed as follows:

16 **AMERICAN PLUMBING SYSTEMS, INC.**
17 **C/O Marc A. Carpenter**
18 **Agent for Service of Process**
19 **555 University Ave., Suite 170**
20 **Sacramento, CA 95825**

21 **JAMES JAY HANACEK, IV**
22 **C/O American Plumbing Systems, Inc.**
23 **13395 New Airport Road, Suite A**
24 **Auburn, CA 95602**

25 **WALTER JACOB KUHLMANN, III**
26 **2901 Shanley Road**
27 **Auburn, CA 95603**

28 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with other
correspondence of The Spivak Law Firm, 1875 Century Park East, FL 7, Los Angeles,
CA 90067.

 (BY EMAIL) I caused the documents to be sent to the persons at the
electronic service addresses listed above from my electronic service address
nora@spivaklaw.com

EXECUTED on Wednesday, August 26, 2026, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

27 

28 _____
NORA GREER

1 **PROOF OF SERVICE**

2 State of California,
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 1875 Century Park East, FL
7 7, Los Angeles, CA 90067.

8 2. I am familiar with the practice of The Spivak Law Firm, for
9 collection and processing of correspondence for mailing with the United States
10 Postal Service. It is the practice that correspondence is deposited with the
11 United States Postal Service the same day it is submitted for mailing.

12 On Wednesday, August 26, 2026, I served the foregoing document
13 described as **PROOF OF SERVICE OF SUMMONS (AMERICAN PLUMBING SYSTEMS, INC.)** on
14 interested parties by placing a true and correct copy thereof enclosed in a
15 sealed envelope, with postage fully prepaid, addressed as follows:

16 **AMERICAN PLUMBING SYSTEMS, INC.**
17 **C/O Marc A. Carpenter**
18 **Agent for Service of Process**
19 **555 University Ave., Suite 170**
20 **Sacramento, CA 95825**

21 **JAMES JAY HANACEK, IV**
22 **C/O American Plumbing Systems, Inc.**
23 **13395 New Airport Road, Suite A**
24 **Auburn, CA 95602**

25 **WALTER JACOB KUHLMANN, III**
26 **2901 Shanley Road**
27 **Auburn, CA 95603**

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CA 90067.

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nora@spivaklaw.com

EXECUTED on Wednesday, August 26, 2026, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

27 

28 _____
NORA GREER

1
2 **PROOF OF SERVICE**

3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1875 Century Park East, FL
7, Los Angeles, CA 90067.

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collection and processing of correspondence for mailing with the United States
8 Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9 On Wednesday, August 26, 2026, I served the foregoing document
10 described as **PROOF OF SERVICE OF SUMMONS (JAMES JAY HANACEK, IV)** on
interested parties by placing a true and correct copy thereof enclosed in a
11 sealed envelope, with postage fully prepaid, addressed as follows:

12 **AMERICAN PLUMBING SYSTEMS, INC.**
13 **C/O Marc A. Carpenter**
14 **Agent for Service of Process**
15 **555 University Ave., Suite 170**
16 **Sacramento, CA 95825**

17 **JAMES JAY HANACEK, IV**
18 **C/O American Plumbing Systems, Inc.**
19 **13395 New Airport Road, Suite A**
20 **Auburn, CA 95602**

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NORA GREER