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10 *Attorney for Plaintiff and all others similarly*
11 *situated*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 ROBERTO MURGUIA, individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 SARIS EUROPEAN PAINTING, INC., a
19 California corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

CASE NUMBER: **24STCV08381**

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Statements
8. Failure to Maintain Required Records
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by Roberto Murguia, individually and
2 on behalf of all other aggrieved employees (“Plaintiff”), relating to systemic violations of
3 California wage and hour laws by his employer, Saris European Painting, Inc. (“Saris Painting”
4 individually, or collectively as “Defendant”). Plaintiff makes the following allegations on
5 information and belief, except as to allegations pertaining to Plaintiff individually, which are based
6 on his personal knowledge.

7 **INTRODUCTION**

8 1. As private, for-profit businesses, Defendant has jointly implemented common
9 policies and practices that have resulted in systemic violations of California’s wage and hour laws.

10 2. Defendant maximized profits by cutting labor costs, grossly understaffing their
11 projects, denying meal and rest breaks, systematically requiring off-the-clock work, and cheating
12 their employees out of minimum and overtime wages and premium payments.

13 3. Defendant has implemented unlawful written policies with respect to meal and
14 rest breaks. Defendant also requires their non-exempt employees, who are informed that the
15 needs of the businesses take top priority, to work through meal and rest breaks, to take untimely
16 meal periods and to remain on call during such breaks. As a result, Plaintiff and other non-
17 exempt employees have been denied the ability to take the meal and rest breaks that they were
18 and are legally entitled to take.

19 4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
20 himself and a Class of all current and former non-exempt employees of Defendant during the
21 applicable limitations period to compensate these workers for the wages Defendant has stolen
22 from them and to protect current and future workers from being subjected to similar unlawful
23 working conditions perpetrated by Defendant.

24 **JURISDICTION AND VENUE**

25 5. The Superior Court of the State of California has jurisdiction in this matter
26 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
27 under the laws of the State of California.
28

6. Venue is proper in this judicial district and the County of Los Angeles because Defendant maintains its corporate office and Defendant's conducts business in the County of Los Angeles.

7. Venue is also proper in this judicial district and the County of Los Angeles because many other Class Members also worked for Defendant in the County of Los Angeles.

8. Defendant employed Plaintiff and other Class Members within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and the other Class Members in the County of Los Angeles.

THE PARTIES

9. Plaintiff is a citizen of the State of California and currently resides in San Jose, California. During the relevant time period, Plaintiff was employed by Defendant as a painter, a non-exempt, hourly employee.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant, is and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. Defendant is authorized to conduct business and does conduct business in the State of California.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

13. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts described herein.

CLASS ACTION ALLEGATIONS

14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of himself and the following Class:

All current or former non-exempt, hourly-paid employees who worked for Defendant within the State of California during the statute of limitations period.

15. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

16. This action is appropriately suited for a class action because:

A. The proposed Class is a significant number. Plaintiff is informed and believes that the proposed Class consists of at least one hundred (100) current and former non-exempt employees, rendering joinder impractical and more efficient than other methods.

B. This action involves common questions of law and fact to the proposed Class because the action focuses on Defendant's systematic course of illegal payroll practices and policies, which was applied to all non-exempt employees in uniform violation of the California Labor Code, IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair business practices arising from such violations. Here are a few common questions of law and fact that will drive resolution of this action:

1. Whether Defendant failed to provide non-exempt employees with legally compliant meal periods and rest breaks, and whether Defendant properly paid premium pay at the appropriate regular rate as a result of missed and non-compliant meal periods and rest breaks;
2. Whether Defendant failed to timely pay wages to non-exempt employees in compliance with California law;
3. Whether Defendant's time rounding policy and practice is in violation of California law;
4. Whether Defendant failed to pay overtime and minimum wages to non-exempt employees in compliance with California law;
5. Whether Defendant failed to maintain required records and accurate wage statements for non-exempt employees;
6. Whether Defendant failed to pay non-exempt employees all wages due, for all hours worked, including for off-the-clock work, travel time, pre and post-shift work and COVID screening;
7. Whether Defendant failed to pay COVID-19 supplemental sick pay and include it on wage statements;
8. Whether Defendant engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION
Failure to Provide Required Meal Periods
[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class Against all Defendants)

17. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 16 (A) – (D).

18. During the statute of limitations period, as part of Defendant's unlawful policies and practices to deprive their non-exempt employees of all wages earned and due, Defendant required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, auto-deducting meal periods, and Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

19. Moreover, Defendant interfered with and restricted the ability of Plaintiff and Class members to take meal periods by requiring them to carry cell phones and walkie-talkies during meal periods, and not permitting Plaintiff and the other Class members to leave their work areas when taking meal periods.

20. Defendant has implemented several common policies and practices that have caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.

21. Defendant grossly understaffs their projects such that non-exempt employees are given so much work to complete that they regularly miss or take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiff and Class members have so much work to complete within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Defendant failed to implement a meal period policy for work shifts longer than ten (10) hours or more.

1 22. Moreover, Defendant failed to implement adequate policies or procedures to
2 provide meal periods to their non-exempt employees. Among other things, Defendant
3 overworked Plaintiff and Class members and did not adequately advise them of their rights to
4 take meal periods, and systematically denied them the opportunity to take meal periods,
5 including second meal periods during shifts of ten hours or longer.

6 23. Defendant has also violated California Labor Code §§ 226.7, all applicable wage
7 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.
8 Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
9 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance
10 with the applicable wage order, one additional hour of compensation at the proper regular rate of
11 pay for each workday that such a meal period was not authorized or permitted.

12 24. Defendant further violated California Labor Code sections 226.7, 510, 1194,
13 1197, IWC Wage Order No. 16-2001, and all applicable IWC Wage Orders, by failing to
14 compensate Plaintiff and Class members for all hours worked during their meal periods.

15 25. As a proximate result of the aforementioned violations, Plaintiff and Class
16 members have been damaged in an amount according to proof at trial, and seek all wages earned
17 and due, interest, penalties, expenses, and costs of suit.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Provide Required Rest Breaks**

20 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders
and Applicable Sections]**

21 **(On Behalf of Plaintiff and the Class Against all Defendants)**

22 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 25.

24 27. At all times relevant herein, as part of Defendant's illegal policies and practices to
25 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit
26 Plaintiff and Class members to take rest breaks as required under California Labor Code §§
27 226.7 and 512, and § 12 of the applicable IWC Wage Order.
28

1 28. As with meal periods, Defendant's policies and practices caused Plaintiff and
2 Class members to miss or otherwise take non-compliant rest periods by, among other things,
3 giving them unreasonable amounts of work that had to be completed within their shift such that
4 rest periods simply could not be taken. This was the result of systematic understaffing at .
5 Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in
6 the inability of Plaintiff and Class members to take compliant rest periods. In addition,
7 Defendant did not adequately notify Plaintiff and Class members of their rights to take rest
8 periods, and systematically denied them the opportunity to take rest periods, including all rest
9 periods required during long shifts, which at times exceeded 12 consecutive hours.

10 29. Defendant further violated California Labor Code § 226.7, IWC Wage Order No.
11 9-2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law,
12 Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who
13 were not provided with a rest break, in accordance with the applicable wage order, one additional
14 hour of compensation at the proper regular rate of pay for each workday that a rest break was not
15 provided.

16 30. As a proximate result of the aforementioned violations, Plaintiff and Class
17 members have been damaged in an amount according to proof at trial, and seek all wages earned
18 and due, interest, penalties, expenses, and costs of suit.

19 **THIRD CAUSE OF ACTION**
20 **Failure to Pay Overtime Wages**
21 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders**
22 **and Applicable Sections]**
23 **(On Behalf of Plaintiff and the Class against all Defendants)**

24 31. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 30.

26 32. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
27 and applicable sections, Defendant is required to compensate Plaintiff and Class members for all
28 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first

1 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
2 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
3 on the seventh consecutive day of work in any workweek.

4 33. Plaintiff and Class members are current and former direct and temporary hourly
5 paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all
6 applicable IWC Wage Orders. During the statute of limitations period, Defendant failed to
7 compensate Plaintiff and Class members for all overtime hours worked as required under the
8 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
9 methods: failing to pay any overtime compensation; failing to properly calculate the regular rate
10 of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or
11 suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so
12 as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting
13 Plaintiff and Class members to work through meal and rest periods but not compensating them
14 for this time, failing to include this time in all hours worked; failing to pay for travel time; failing
15 to pay the highest regular rate of pay based upon nondiscretionary bonus/commission payments;
16 failing to pay for training time; editing or otherwise manipulating the overtime hours worked,
17 failing to pay for pre-and post-shift work (including COVID screenings and donning and doffing
18 uniforms and safety equipment); and other methods to be discovered.

19 34. In a short-sighted attempt to maximize profits, Defendant has understaffed its
20 projects. Not only has this practice resulted in widespread missed meal and rest breaks, but it
21 has also caused Plaintiff and Class members to perform significant amounts of work while off-
22 the-clock. Defendant is aware or should have been aware that Plaintiff and Class members
23 perform this work off-the-clock work because managers see them doing this work well before
24 the beginning the start of their scheduled shifts.

25 35. Defendant has also engaged in an unlawful time rounding practice, where the time
26 worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid
27 regular and overtime wages. Defendant implemented a rounding practice wherein it rounds the
28 time worked by non-exempt employees. Defendant compensates Plaintiff and Class members

1 based on rounded time which is favorable to Defendant and not to Plaintiff and the Class
2 members.

3 36. Plaintiff and Class members must get to work by no later than the start of their
4 shifts and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
5 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory
6 job duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts.
7 This results in widespread underpayment of time worked.

8 37. In violation of California law, Defendant has knowingly and willfully refused to
9 perform their obligations to compensate Plaintiff and Class members for all wages earned and all
10 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
11 members have suffered, and continue to suffer, substantial losses related to the use and
12 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
13 seeking to compel Defendant to fully perform their obligations under state law, all to their
14 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
15 this Court.

16 38. Defendant's conduct described herein violates California Labor Code §§ 510,
17 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
18 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
19 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
20 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
21 penalties, attorneys' fees, expenses, and costs of suit.

22 **FOURTH CAUSE OF ACTION**
23 **Failure to Pay Minimum Wages**
24 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
25 **(On Behalf of Plaintiff and the Class against all Defendants)**

26 39. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 38.
28

1 40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
2 and applicable sections, payment to an employee of less than the applicable minimum wage for
3 all hours worked in a payroll period is unlawful.

4 41. During the statute of limitations period, the hourly rates for Plaintiff and Class
5 members were precisely at minimum wage. Based on this common practice, Defendant failed to
6 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
7 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
8 rest breaks, but not compensating them for this time, and failing to include this time in all hours
9 worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing
10 to pay for travel time, failing to pay for pre-and post-shift work (including COVID screenings
11 and donning and doffing uniforms); and other methods to be discovered.

12 42. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
13 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
14 aforementioned violations, Plaintiff and other aggrieved employees have been damaged in an
15 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,
16 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees
17 are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
18 penalties, attorneys' fees, expenses, and costs of suit.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Pay Timely Wages**

21 **[Cal. Lab. Code §§ 204, 210]**

22 ***(On Behalf of Plaintiff and the Class against all Defendants)***

23 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 42.

25 44. California Labor Code § 204 provides that all wages earned by any person in any
26 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
27 wages due upon termination of an employee, are due and payable between the 16th and 26th day
28 of the month during which the labor was performed. California Labor Code § 204 further
provides that all wages earned by any person in any employment between the 16th and the last

1 day, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 1st and the 10th day of the following month.
3 California Labor Code § 204 further provides that all wages earned for labor in excess of the
4 normal work period shall be paid no later than the payday for the next regular payroll period.

5 45. During the statute of limitations period, Defendant, among other things, willfully
6 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
7 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
8 any time period permissible under Labor Code § 204.

9 46. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
10 and Class members are entitled to all available statutory penalties, including but not limited to,
11 civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and
12 other applicable provisions under the California Labor Code and IWC Wage Orders, and an
13 award of costs, expenses, and reasonable attorneys' fees.

14 **SIXTH CAUSE OF ACTION**
15 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
16 **[Cal. Lab. Code §§ 201, 202, 203]**
(On Behalf of Plaintiff and the Class against all Defendants)

17 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 46.

19 48. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendant is
20 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
21 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
22 and unpaid at the time of discharge are due and payable immediately.

23 49. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
24 pay all accrued wages due to an employee no later than seventy-two (72) hours after the
25 employee quits his or her employment, unless the employee provided seventy-two (72) hours
26 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
27 wages at the time of quitting.

1 50. California Labor Code § 203 provides that if an employer willfully fails to pay, in
2 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
3 discharged or who quits, the employer is liable for waiting time penalties in the form of
4 continued compensation to the employee at the same rate for up to thirty (30) workdays.

5 51. During the statute of limitations period, Defendant has willfully failed to pay
6 accrued wages and other compensation to Plaintiff and Class members in accordance with
7 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
8 Plaintiff and Class members with their final paychecks within the timeframes required under
9 California law. In addition, because Defendant has failed and continue to fail to properly
10 compensate Plaintiff and Class members for all hours worked when due, overtime wages, and
11 compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and
12 continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in
13 accordance with California Labor Code §§ 201 and 202.

14 52. As a result, Plaintiff and Class members are entitled to all available statutory
15 penalties, including the waiting time penalties provided in California Labor Code § 203, together
16 with interest thereon, as well as other available remedies.

17 53. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
18 and Class members have been deprived of compensation in an amount according to proof at the
19 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
20 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
21 § 1194.

22 **SEVENTH CAUSE OF ACTION**
23 **Failure to Furnish Accurate Itemized Wage Statements**
24 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
25 **IWC Wage Orders and Applicable Sections]**
26 **(On Behalf of Plaintiff and the Class against all Defendants)**

27 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 53.

1 55. During the statute of limitations period, Defendant routinely failed to provide
2 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
3 showing each employee's gross wages earned, total hours worked, all deductions made, net
4 wages earned, and all applicable hourly rates in effect during each pay period and the
5 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
6 § 226 and all applicable IWC Wage Orders and applicable sections.

7 56. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
8 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
9 employees, and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon
10 Defendant's failure to include information related to COVID-19 supplemental sick pay. Further,
11 Defendant was and is not providing Plaintiff and other aggrieved employees with proper meal
12 periods and rest breaks but intentionally fails to include in their wage statements one (1)
13 additional hour of compensation at their regular rates of pay for each non-compliant meal period
14 or rest break which include but not limited to, shift differentials, nondiscretionary bonuses, etc.,
15 and failing to pay all wages due based upon Defendant's illegal and unlawful rounding policy
16 which favored Defendant. These are violations of Labor Code §226.

17 57. Defendant knowingly and intentionally failed to provide Plaintiff and Class
18 members with timely, accurate, and itemized wage statements in accordance with California
19 Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine
20 whether they were being paid for, among other things, all of the hours they worked and at the
21 proper rates of pay.

22 58. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
23 and Class members have been damaged in an amount according to proof at trial, and seek all
24 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
25 entitled to all available penalties, including but not limited to penalties pursuant to California
26 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
27 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
28 well as other available remedies.

1 **EIGHTH CAUSE OF ACTION**
2 **Failure to Maintain Required Records**
3 **[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders**
4 **and Applicable Sections]**
5 **(On Behalf of Plaintiff and the Class against all Defendants)**

6 59. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 58.

8 60. During the statute of limitations period, as part of Defendant's illegal payroll
9 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
10 Defendant knowingly and intentionally failed to maintain records as required under California
11 Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections,
12 including but not limited to, the following records: total daily hours worked by each non-exempt
13 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
14 non-exempt employee begins and ends each workday; and accurate itemized wage statements.

15 61. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
16 and Class members have been damaged in an amount according to proof at trial, and are entitled
17 to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
18 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
19 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
20 reasonable attorneys' fees, including but not limited to those provided in California Labor Code
21 § 226(e), as well as other available remedies.

22 **NINTH CAUSE OF ACTION**
23 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**
24 **[Cal. Lab. Code § 2802]**
25 **(On Behalf of Plaintiff and the Class against Defendants)**

26 62. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 61.

28 63. California Labor Code § 2802(a) requires an employer to indemnify an employee
for all necessary expenditures or losses incurred by the employee in direct consequence of the
discharge of her his or her duties, or of his or her obedience to the directions of the employer.

64. During the Class period, Defendant knowingly and willfully failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendant, including but not limited to, the costs and expenses related to their uniforms and uniform maintenance, in violation of California Labor Code § 2802.

65. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

TENTH CAUSE OF ACTION

**Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leaves
[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]
(On Behalf of Plaintiff and the Class against Defendants)**

66. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 65.

67. Plaintiff is informed and believes Defendant knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave and Covid-19 Supplemental Sick Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

68. Defendant failed to pay Plaintiff and Class Members paid sick leave at one of the lawful rates set forth in the statute because Defendant failed to include in their calculation the commissions and additional remuneration received by Plaintiff and the Class Members.

69. Furthermore, Defendant knowingly and intentionally failed in their affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1

1 requires employers to provide up to 80 hours of Covid19 Supplemental Paid Sick Leave to
2 employees for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 requires
3 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
4 January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick
5 leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental
6 Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended
7 thereafter. 85. Under Labor Code section 248.1, employees must be paid for Covid-19
8 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
9 last pay period, (2) state minimum wage, (3) local minimum wage.

10 70. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
11 supplemental paid sick leave according to the highest of the following four methods: (1) the
12 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
13 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
14 the state minimum wage, or (4) the local minimum wage.

15 71. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
16 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's
17 total wages in a 90-day period divided by total hours worked.

18 72. Defendant failed to provide and pay Covid-19 supplemental paid sick leave in the
19 manner described above because Defendant failed to pay Plaintiff and the Class Members such
20 sick leave at one of the rates authorized by statute.

21 73. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the
22 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

23 **ELEVENTH CAUSE OF ACTION**

24 **Unfair and Unlawful Business Practices**

25 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**

26 **(On Behalf of Plaintiff and the Class against all Defendants)**

27 74. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 73.

1 75. Each and every one of Defendant's acts and omissions in violation of the
2 California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but
3 not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper
4 overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all
5 wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate
6 itemized wage statements or to maintain required records all constitute an unfair and unlawful
7 business practice under California Business and Professions Code § 17200 *et seq.*

8 76. Defendant's violations of California wage and hour laws constitute a business
9 practice because the aforementioned acts and omissions were done repeatedly over a significant
10 period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

11 77. Among other practices, Defendant has avoided payment of wages, overtime
12 wages, the provision of meal and rest breaks, failed to provide notice of wage theft pursuant to
13 Labor Code §2810.5, and other benefits as required by the California Labor Code, the California
14 Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed to
15 record, report, and pay the correct sums of assessment to the state authorities under the
16 California Labor Code and other applicable regulations.

17 78. As a result of these unfair and unlawful business practices, Defendant has reaped
18 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
19 and members of the public. Defendant should be made to disgorge its ill-gotten gains and to
20 restore them to Plaintiff and Class members.

21 79. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
22 members to seek preliminary and permanent injunctive relief, including but not limited to orders
23 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
24 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
25 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
26 time of trial.

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TWELFTH CAUSE OF ACTION
Representative Action for Civil Penalties
[Cal. Lab. Code §§ 2698- 2699.5]
(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

80. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 79, with exception of the allegations in Paragraphs 14 through 16 (A)-(D).

81. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of the State of California, and all other aggrieved employees (e.g., current and former direct and temporary, hourly-paid employees working or placed on assignment at a facility of Defendant DCG in the State of California at any time within the period beginning one (1) year prior and sixty-five (65) days prior to the January 19, 2024 notice Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final judgment ("statute of limitations period").

82. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current and former hourly-paid employees working in California pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

83. As set forth fully in the above paragraphs incorporated herein, Defendant failed to pay overtime wages, failed to provide the requisite meal periods and rest breaks (an any associated premium pay at the regular rate), failed to pay minimum wages, failed to provide accurate wage statements, failure to pay all wages owed at the time of termination, failed to maintain accurate employment records, and failed to indemnify the aggrieved employees for reasonable business expenses in violation of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198 and 2802.

84. In addition to the foregoing violations of the California Labor Code and IWC Wage Order, Defendant also failed to comply with California Labor Code § 2810.5. Labor Code § 2810.5 requires employers to provide notice to employees of their rate(s) of pay, designated

1 pay day, the employer's intent to claim allowances (meal or lodging allowances) as part of the
2 minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece,
3 etc.), including any applicable rates for overtime. The law requires that the notice contain the
4 employer's "doing business as" names, and that it be provided at the time of hiring and within 7
5 days of a change if the change is not listed on the employee's pay stub for the following pay
6 period. The notice must be provided in the language the employer normally uses to communicate
7 employment-related information to the employee, through translated notices provided by the
8 Department of Labor.

9 85. Defendant failed to comply with California Labor Code § 2810.5 by simply not
10 providing the required accurate notice to Plaintiff and Class members at any time during their
11 employment.

12 86. Moreover, Defendant failed to provide 80 hours of COVID-19 Supplemental Paid
13 Sick leave and compensate aggrieved employees at their regular rate of pay for supplemental
14 sick leave, i.e., their highest regular rate of pay, taking into consideration non-discretionary
15 bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant also
16 failed to provide COVID-19 Supplemental Sick Leave to aggrieved employees in addition to
17 regular sick leave, in violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed
18 to accurately reflect any offset and/or the current amount of COVID-19 supplemental Sick Leave
19 available to aggrieved employees on their wage statements, in violation of California Labor Code
20 §§ 246, 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided herein.

21 87. Defendant was required to provide notice to aggrieved employees when they were
22 exposed to COVID-19. See, Labor Code §§6409.6 and 6432. Here, Defendant failed to notice
23 the aggrieved employees when they were exposed to COVID-19.

24 88. California Labor Code §§ 226 and 1198.5 require California employers to provide
25 copies of their personnel files and certain other employment records upon their request. Here,
26 Defendant failed to respond to requested copies of these records on behalf of Plaintiff from his
27 counsel.

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89. California Labor Code §432 provides an employee must be provided with copies of any signed instrument relating to obtaining or holding employment. Defendant failed to provide all copies of signed documents relating to obtaining and holding employment to Plaintiff and the other aggrieved employees.

90. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, 1400 and all applicable IWC Wage Orders, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 226, 226.7, 210, 218.6, 226, 226.7, 246, 248.1, 248.6, 432, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802 and 2810.5. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

91. Pursuant to California Labor Code §§ 2699.3, on January 19, 2024, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;

1 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
2 and all applicable IWC Wage Orders and pertinent sections;
3 4. For liquidated damages pursuant to California Labor Code § 1194.2;
4 5. For preliminary and permanent injunctive relief enjoining Defendant from
5 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
6 from engaging in the unlawful business practices complained of herein;
7 6. For waiting time penalties pursuant to California Labor Code § 203;
8 7. For statutory penalties according to proof, including but not limited to all
9 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5,
10 1775, 1197.1, 2699.3;
11 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
12 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
13 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
14 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
15 applicable provision providing for pre-judgment interest;
16 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
17 218.5, 226, 1194, 2802, 2699.3, et seq. and California Code of Civil Procedure § 1021.5,
18 California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other
19 applicable provisions providing for attorneys' fees and costs;
20 11. For declaratory relief;
21 12. For an order requiring and certifying the First through Eleventh Causes of Action
22 as a class action;
23 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
24 Class counsel; and
25 14. For such further relief that the Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: April 2, 2024

LAW OFFICE OF SCOTT ERNEST
WHEELER

By: 
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

*Attorney for Plaintiff and all others similarly
situated*