

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Natalie Haritounian (SBN 324318)
n.haritounian@d.law
Jonas Agle (SBN 352712)
j.agle@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

Attorneys for Plaintiff JUAN DIAZ JR.,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JUAN DIAZ JR., an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

EAGLES POINT SECURITY, a California
corporation; EAGLES POINT SECURITY,
INC., a business entity of unknown form; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00002255-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Kenneth J. Medel

Dept.: C-66

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code §§ 201, 201.3, 202, 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff JUAN DIAZ JR. (“Plaintiff”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants EAGLES POINT SECURITY, a Delaware limited liability company; EAGLES POINT SECURITY, INC., a business entity of unknown form; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff JUAN DIAZ JR. resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant EAGLES POINT SECURITY is a Delaware limited liability company and is registered with the California Secretary of State. Defendant EAGLES POINT SECURITY has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

6. Defendant EAGLES POINT SECURITY, INC. is a business entity of unknown form and has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with

1 Defendants.

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

10 8. Plaintiff is informed and believes and thereon alleges that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants
12 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the
13 acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants
14 acted in all respects as the employers or joint employers of Class Members. Defendants, and
15 each of them, exercised control over the wages, hours or working conditions of Class Members,
16 or suffered or permitted Class Members to work, or engaged, thereby creating a common law
17 employment relationship, with Class Members. Therefore, Defendants, and each of them,
18 employed or jointly employed Class Members.

19 9. Whenever and wherever reference is made in this Complaint to any act by a
20 defendant or defendants, such allegations and references shall also be deemed to mean the acts
21 and failures to act of each defendant acting individually, jointly, and severally.

22 10. Whenever and wherever reference is made to individuals who are not
23 named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors
24 of Defendants, such individuals at all relevant times acted on behalf of Defendants within the
25 scope of their employment.

26 **JURISDICTION AND VENUE**

27 11. This Court has jurisdiction over this Action pursuant to California Code of
28 Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is

brought as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred in part in County. Defendants maintain and operate facilities in San Diego County and employs Plaintiff and other Class Members in San Diego County, while doing business throughout California.

FACTUAL BACKGROUND

12. Class Members consistently worked at Defendants behest without being paid all wages due. Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime, double time pay, sick pay, and meal and rest break premiums, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, failing to provide Plaintiff with his personnel and pay records on request, and failing to reimburse necessary business expenses all in violation of various provisions of the California Labor Code and applicable Wage Orders.

13. During the course of Class Members' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Class Members were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, Class Members were required by Defendants to clock out at the end of their scheduled shifts and continue working. Moreover, Class Members were required to train other employees off the clock and without being compensated for the time. Additionally, Class Members were required to use their personal cell phones for work outside of scheduled work hours including for communicating with supervisors and following employee group chats. Class Members were also required to respond to work demands on their personal cell phones during scheduled meal

1 periods and would not be compensated for this time.

2 14. Defendants also failed to pay Class Members all wages due and owing
3 because Defendants failed to incorporate non-discretionary bonuses and/or commissions into the
4 regular rate of pay used to calculate and pay for overtime, double time pay, sick pay, and meal
5 and rest break premiums. Contrary to the requirements of the Labor Code and IWC Wage
6 Orders under California law, Defendants did not use the regular rate of pay Defendants to
7 calculate and pay for overtime pay, double time pay, sick pay, and meal and rest break
8 premiums.

9 15. Moreover, Defendants had a consistent policy and practice of unlawfully
10 rounding hours worked to the detriment of the Class Members. Rather than paying Class
11 Members for all hours and minutes they actually worked, Defendants followed a uniform policy
12 and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the
13 nearest 15-minute or 30-minute time increment), and generally did so to the detriment of the
14 Class Members, and Plaintiff contend this policy is not neutral and resulted, over time, to the
15 detriment of the Class Members by systematically under-compensating them. Rather than
16 reflecting the actual hours worked by Class Members, the time entries were rounded and reduced
17 to reflect the scheduled work time rather than the actual hours worked. These unlawfully
18 rounded time entries were inputted into Defendants' payroll system from which wage statements
19 and payroll checks were created.

20 16. By implementing policies, programs, practices, procedures and protocols
21 which resulted in off the clock work, unlawful rounding by Defendants, and the failure to
22 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
23 calculate and pay overtime, sick pay, and meal and rest break premiums, Defendants' willful
24 actions resulted in the systematic underpayment of wages to Class Members, including
25 underpayment of overtime pay to Class Members over the relevant time period. For example, the
26 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
27 pay later than they should have.

28 17. As a result of the above described requirements to work off the clock,

1 unlawful rounding by Defendants, the failure to incorporate non-discretionary bonuses and/or
2 commissions into the regular rate of pay used to calculate and pay overtime, sick pay, and meal
3 and rest break premiums, and the other wage violations they endured at Defendants' hands,
4 Class Members were not properly paid all wages earned and all wages owed to them by
5 Defendants, including when working more than eight (8) hours in any given day and/or more
6 than forty (40) hours in any given week.

7 18. As a result of Defendants' unlawful policies and practices, Class Members
8 incurred overtime hours worked for which they were not adequately and completely
9 compensated, in addition to the hours they were required to work off the clock. To the extent
10 applicable, Defendants also failed to pay Class Members at an overtime rate of 1.5 times the
11 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
12 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
13 consecutive work day, as required under the Labor Code and applicable IWC Wage Orders.

14 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
16 Members for all hours worked, and failing to pay minimum wages for all time worked, as
17 required by California law. Defendants thus failed to pay Class Members at least minimum
18 wages for all the time they worked for Defendants in violation of the Labor Code and applicable
19 IWC Wage Orders as the actual times when Class Members were under the control and direction
20 of Defendants was under reported in the hours reflected on the timekeeping records.
21 Furthermore, Defendants' willful actions resulted in the systematic underpayment of wages to
22 Class Members, including underpayment of overtime pay to Class Members over a period of
23 time.

24 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and
25 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
26 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
27 and continuing to the present, Defendants also had a consistent policy or practice of failing to
28 pay Class Members their true and correct overtime compensation at premium overtime rates for

1 all hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-
2 time rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code
3 § 510 and the corresponding sections of IWC Wage Orders.

4 21. Additionally, Defendants failed to provide all the legally required unpaid,
5 off-duty meal periods and all the legally required paid, off-duty rest periods to Class Members,
6 as required by the applicable Wage Order and Labor Code. Class Members were required to
7 perform work as ordered by Defendants for more than five (5) hours during a shift but were
8 often required to do so without receiving a lawful and timely meal break. In addition to untimely
9 meal periods, Defendants also required Class Members to respond to work demands. Defendants
10 placed their needs over Class Members lawful meal and rest breaks and this resulted in Class
11 Members often having to work through their scheduled meal and/or rest breaks, or otherwise
12 taking shortened ones, because the demands of the job would not avail them the opportunity to
13 take a lawfully uninterrupted and off duty meal and/or rest break. To the extent Class Members
14 were permitted to take meal and/or rest breaks, they were not permitted to leave the premises
15 and were required to keep their cell phones on and respond to work demands.

16 22. On the occasions when Class Members worked over 10 hours in a shift,
17 Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal
18 period. As a result, Defendants' failure to provide Class Members with all legally required off-
19 duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be
20 evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Class
21 Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of
22 pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

23 23. Therefore, for at least four years prior to the filing of this action and through
24 to the present, Defendants have regularly required Class Members to work shifts in excess of
25 five (5) hours without providing them with uninterrupted meal periods of not less than thirty
26 (30) minutes, and shifts in excess of (10) hours without providing them with second meal
27 periods of not less than thirty minutes; nor did Defendants pay Class Members "premium pay,"
28 i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period

1 that Defendants failed to provide or deficiently provided.

2 24. Meal period violations thus occurred in one or more of the following
3 manners:

- 4 (a) Class Members were not provided full thirty-minute duty free meal periods
5 for work days in excess of five (5) hours and were not compensated one (1)
6 hour's wages in lieu thereof, all in violation of, among others, Labor Code
7 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
8 Order(s);
- 9 (b) Class Members were not provided second full thirty-minute duty free meal
10 periods for work days in excess of ten (10) hours;
- 11 (c) Class Members were required to work through at least part of their daily
12 meal period(s);
- 13 (d) Meal periods were provided after five (5) hours of continuous work during
14 a shift; and
- 15 (e) Class Members were restricted in their ability to take a full thirty-minute
16 meal period.

17 25. Class Members were also not authorized and permitted to take lawful rest
18 periods, were systematically required by Defendants to work through or during breaks and were
19 not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their
20 ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-
21 free rest periods. To the extent Class Members were permitted to take rest breaks, they were not
22 off-duty as Class Members were required to keep their radios on and respond to work demands.
23 Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
24 present, Defendants have consistently failed to provide Class Members with paid rest breaks of
25 not less than ten minutes for every work period of four or more consecutive hours; or major
26 fraction thereof, nor did Defendant pay Class Members premium pay for each day on which
27 requisite rest breaks were not provided or were deficiently provided.

28 26. Rest period violations therefore arose in one or more of the following

manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

27. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed incorporate non-discretionary and/or commissions into the regular rate of pay used to calculate and pay for overtime, double time, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Moreover, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

28. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws. Specifically, Defendants waited at least nine days to give Plaintiff his final check. Additionally, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by requiring off the clock work, unlawfully rounding to the detriment of Class Members, and failing to

1 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
2 calculate and pay for overtime, double time, sick pay, and meal and rest break premiums.
3 Moreover, Defendants failed to pay premium wages owed for unprovided meal periods and rest
4 periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
5 required time was willful within the meaning of Labor Code § 203.

6 29. Additionally, from at least four (4) years prior to the filing of this lawsuit
7 and continuing to the present, Defendants have regularly required Plaintiff to incur business
8 expenses in the course of performing his required job duties for Defendants including for cell
9 phone expenses and mileage. Upon information and belief, Class Members incurred similar
10 costs. These expenses incurred by Plaintiff and Class Members were necessary and required of
11 them in performing their assigned job duties, but Defendants failed to reimburse Class Members
12 for all such necessary expenditures, thus entitling them to reimbursement according to proof as
13 required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

14 30. In light of the foregoing, Plaintiff and Class Members bring this action
15 pursuant to, *inter alia*, Labor Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226(b), 226.3, 226.7,
16 510, 512, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5,
17 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

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

22 **CLASS ALLEGATIONS**

23 32. Plaintiff seeks to represent the Subclasses composed of and defined as
24 follows:

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

27 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all

hours worked in excess of eight in a day and/or forty in a week.

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

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

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

f. Subclass 6. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

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

h. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

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

j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

33. Plaintiff reserves the right under California Rule of Court 3.765 to amend or

1 modify the class description with greater particularity or further division into subclasses or
2 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
3 against Defendants, the Class Period should be adjusted accordingly.

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

13 35. This action has been brought and may properly be maintained as a class
14 action under the provisions of Code of Civil Procedure § 382 because there is a well-defined
15 community of interest in litigation and proposed class is easily ascertainable.

16 **A. Numerosity**

17 36. The potential members of the class as defined are so numerous that joinder
18 of all the member of the class is impracticable. While the precise number of class member has
19 not been determined at this time, Plaintiff is informed and believes that Defendants employ or,
20 during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class
21 definition within the State of California.

22 37. Accounting for employee turnover during the relevant time period increases
23 this number substantially. Plaintiff alleges that Defendants’ employment records will provide
24 information as to the number and location of all Class Members.

25 **B. Commonality**

26 38. There are questions of law and fact common to the Class that predominates
27 over any questions affecting only individual Class Members. These common questions of law
28 and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Class Members with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Class Members to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Class Members with inaccurate wage statements;
- g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- h. Whether Defendants' conduct was willful;
- i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- m. Whether Defendants violated Labor Code §§ 226 and 1198.5 by failing to produce employment records and pay records;
- n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

- 1 o. Whether Class Members are entitled to equitable relief pursuant to Business and
2 Professions Code § 17200 *et seq.*

3 **C. Typicality**

4 39. The claims of the named plaintiff is typical of those of Class Members. The
5 Class Members all sustained injuries and damages arising out of and caused by Defendants’
6 common course of conduct in violation of statutes, as well as regulations that have the force and
7 effect of law, as alleged herein.

8 **D. Adequacy of Representation**

9 40. Plaintiff will fairly and adequately represent and protect the interest of the
10 Class Members. Counsel who represents Class Members are experienced and competent in
11 litigating employment class actions.

12 **E. Superiority of Class Action**

13 41. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
15 questions of law and fact common to all Class Members predominate over any questions
16 affecting only individual Class Members. Each Class Member has been damaged and is entitled
17 to recovery by reason of Defendants’ illegal policies or practices of failing to compensate Class
18 Members properly.

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

1 would otherwise be foreclosed from receiving in a multiplicity of individual lawsuits that would
2 be cost prohibitive to them.

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

10 44. Defendants, as prospective and actual employers of the Class Members, had
11 a special fiduciary duty to disclose to prospective Class Members the true facts surrounding
12 Defendants' pay practices, policies and working conditions imposed upon Class Members as
13 well as the effect of any alleged arbitration agreements that may have been forced upon them. In
14 addition, Defendants knew they possessed special knowledge about pay practices and policies,
15 most notably intentionally refusing to pay for all hours actually worked which should have been
16 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
17 and policies and practices on Class Members.

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

25 **FIRST CAUSE OF ACTION**
26 **FAILURE TO PAY MINIMUM WAGES**
27 **(Against All Defendants)**

28 46. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set

1 forth in full herein.

2 47. Defendants failed to pay Class Members minimum wages for all hours
3 worked. Defendants had a consistent policy of misstating Class Members' time records and
4 failing to pay Class Members for all hours worked. Class Members would work hours and not
5 receive wages, including as alleged above in connection with off the clock work and unlawful
6 rounding of hours. Defendants, and each of them, have intentionally and improperly changed,
7 adjusted and/or modified the hours of Class Members, which resulted in off the clock work and
8 underpayment of all wages owed to Class Members over a period of time, while benefiting
9 Defendants. Additionally, Defendants failed to incorporate non-discretionary bonuses and/or
10 commissions into the regular rate of pay used to calculate and pay for overtime and double time
11 pay overtime pay, double pay, sick pay, and meal and rest break premiums. During the relevant
12 time period, Defendants thus regularly failed to pay minimum wages to Class Members, to their
13 detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members for
14 hours worked during alleged meal and rest periods for which Class Members were consistently
15 denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and hour
16 practices manifested, without limitation, applicable to the Class as a whole, as a result of
17 implementing a uniform policy and practice that denied accurate compensation to Class
18 Members as to minimum wage pay.

19 48. In California, employees must be paid at least the then applicable state
20 minimum wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to
21 California Labor Code § 204, other applicable laws and regulations, and public policy, an
22 employer must timely pay its employees for all hours worked. Defendants failed to do so.

23 49. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
24 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
25 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

26 50. The applicable minimum wages fixed by the commission for work during
27 the relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

28 51. The minimum wage provisions of California Labor Code are enforceable by

1 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
2 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage
3 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
5 including interest thereon, reasonable attorney’s fees and costs of suit.”

6 52. As described in California Labor Code §§ 1185 and 1194.2, any action for
7 wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.
8 Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission
9 Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum
10 wage for all hours worked. All hours must be paid at the statutory or agreed rate and no part of
11 this rate may be used as a credit against a minimum wage obligation.

12 53. In committing these violations of the California Labor Code, Defendants
13 inaccurately recorded, or required Class Members to input times that did not reflect their actual
14 hours worked, or calculated the correct time worked and consequently underpaid the actual time
15 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
16 earned wages, and other benefits in violation of the California Labor Code, the Industrial
17 Welfare Commission requirements and other applicable laws and regulations. As a result of
18 these violations, Defendant also failed to timely pay all wages earned in accordance with
19 California Labor Code § 1194.

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

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

1 56. Pursuant to California Labor Code § 1194.2, Class Members are further
2 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
3 interest thereon.

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

8 58. Wherefore, Class Members are entitled to recover the unpaid minimum
9 wages (including double minimum wages), liquidated damages in an amount equal to the
10 minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of
11 suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class
12 further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well
13 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
14 California Labor Code, including § 558, and/or other applicable statutes.

15 **SECOND CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

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

26 61. By their conduct, as set forth herein, Defendants violated California Labor
27 Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay
28 Class Members: (a) time and one-half their regular hourly rates for hours worked in excess of

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

5 62. Defendants had a consistent policy of not paying Class Members wages for
6 all hours worked, including by requiring off the clock work and unlawfully rounding down
7 actual hours worked as addressed above. Additionally, Defendants failed to incorporate non-
8 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay
9 overtime. Defendants, and each of them, have intentionally and improperly rounded, changed,
10 adjusted and/or modified certain employees' hours, including Plaintiff's, in order to avoid
11 paying Class Members all earned and owed straight time and overtime wages and other benefits,
12 in violation of the California Labor Code, the California Code of Regulations and the IWC
13 Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.
14 Defendants have also violated these provisions by requiring Class Members to work through
15 portions of their meal period. Therefore, Class Members were not properly compensated, nor
16 were they paid overtime rates for hours worked in excess of eight hours in a given day, and/or
17 forty hours in a given week. Based on information and belief, Defendants did not make available
18 to Class Members a reasonable protocol for correcting time records when Class Members
19 worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully
20 rounded to the Class Members' detriment.

21 63. Defendants' failure to pay Class Members the unpaid balance of regular
22 wages owed and overtime compensation, as required by California law, violates the provisions
23 of Labor Code §§ 510 and 1198, and is therefore unlawful.

24 64. Additionally, Labor Code § 558(a) provides "any employer or other person
25 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter
26 or any provisions regulating hours and days of work in any order of the IWC shall be subject to
27 a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee
28 for each pay period for which the employee was underpaid in addition to an amount sufficient to

recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Defendants have violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code § 558.

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

66. Class Members have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

67. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

1 69. Class Members regularly worked shifts greater than five (5) hours and in
2 some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not
3 employ someone for a shift of more than five (5) hours without providing him or her with a meal
4 period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without
5 providing him or her with a second meal period of not less than thirty (30) minutes.

6 70. Defendants failed to provide Class Members with meal periods as required
7 under the Labor Code. Defendants placed their needs over Class Members lawful meal breaks
8 and this resulted in Class Members consistently having to work through their scheduled meal
9 breaks because the demands of the job would not avail them the opportunity to take a lawfully
10 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the
11 occasions when Class Members worked more than ten (10) hours in a given shift, they did so
12 without receiving a second uninterrupted thirty (30) minute meal period as required by law. To
13 the extent Class Members were permitted to take meal periods, they were not authorized to leave
14 the premises and were required to keep their cell phones on and respond to work demands.

15 71. Defendants thus failed to provide Class Members with meal periods as
16 required by the Labor Code, including by not providing them with the opportunity to take meal
17 breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to
18 perform work during breaks.

19 72. Moreover, Defendants failed to compensate Class Members for each meal
20 period not provided or inadequately provided, as required under Labor Code § 226.7 and
21 paragraph 11 of the applicable IWC Wage Orders, which provide that, if an employer fails to
22 provide an employee a meal period in accordance with this section, the employer shall pay the
23 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
24 that the meal period is not provided. Defendants failed to compensate Class Members for each
25 meal period not provided or inadequately provided, as required under Labor Code § 226.7.

26 73. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage
27 Order, paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour
28 of wages at their effective hourly rates of pay for each meal period not provided or deficiently

provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

75. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) work hours.

76. Class Members consistently worked consecutive four (4) hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. To the extent Class Members were permitted to take rest breaks, they were not off-duty as Class Members were required to keep their radios on and respond to work demands. Defendants placed their needs over Class Members lawful rest breaks and this resulted in Class Members consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break. Thus, Class Members were consistently denied of their rest breaks. To the extent Class Members were permitted to take rest breaks, they were not authorized to leave the premises and were required to keep their cell phones on and respond to work demands.

77. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

1 78. Defendants, and each of them, have therefore intentionally and improperly
2 denied rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and
3 paragraph 12 of the applicable IWC Wage Orders.

4 79. Defendants failed to authorize and permit Class Members to take rest
5 periods, as required by the Labor Code. Moreover, Defendants did not compensate Class
6 Members with an additional hour of pay at each Class Member's effective hourly rate for each
7 day that Defendants failed to provide them with adequate rest breaks, as required under Labor
8 Code § 226.7.

9 80. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the
10 applicable IWC Wage Orders, Class Members are entitled to damages in an amount equal to one
11 (1) hour of wages at their effective hourly rates of pay for each day worked without the required
12 rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties
13 against Defendants, and each of them, in a sum as provided by the Labor Code and/or other
14 statutes.

15 **FIFTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 226(a)**
17 **(Against All Defendants)**

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

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

28 83. Defendants failed to provide Class Members with accurate itemized wage

1 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
2 Class Members failed incorporate non-discretionary bonuses and/or commissions into the
3 regular rate of pay used to calculate and pay for overtime, double time, sick pay, and meal and
4 rest break premiums. Thus, the wage statements do not provide accurate hourly rates for
5 overtime and the statements do not comply with Labor Code § 226(a)(9). Moreover, the wage
6 statements given to Class Members failed to accurately account for unpaid wages and overtime
7 because Defendants had unlawfully rounded time entries to the detriment of the Class Members
8 and their actual hours worked were under-reported due to off the clock work. Additionally, the
9 wage statements given to Class Members failed to accurately account for premium pay for
10 deficiently provided meal periods and rest breaks.

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

23 85. Class Members suffered injury as a result of Defendants' knowing and
24 intentional failure to provide them with the accurate wage and hour statements as required by
25 law and are presumed to have suffered injury and be entitled to penalties under Labor Code §
26 226(e), as the Defendants have failed to provide wage statements with accurate and complete
27 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive,
28 and Class Members cannot promptly and easily determine from the wage statement alone one or

1 more of the following: (i) The amount of the gross wages or net wages paid to the employee
2 during the pay period or any of the other information required to be provided on the itemized
3 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which
4 deductions the employer made from gross wages to determine the net wages paid to the
5 employee during the pay period, (iii) The name and address of the employer and, (iv) The name
6 of the employee and only the last four digits of his or her social security number or an employee
7 identification number other than a social security number. For purposes of Labor Code § 226(e)
8 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
9 able to readily ascertain the information without reference to other documents or information.

10 86. Therefore, as a direct and proximate cause of Defendants’ violation of
11 Labor Code § 226(a), Class Members suffered injuries, including among other things confusion
12 over whether they received all wages owed them, the difficulty and expense involved in
13 reconstructing pay records, and forcing them to make mathematical computations to analyze
14 whether the wages paid in fact compensated them correctly for all hours worked.

15 87. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable
16 IWC Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
17 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
18 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
19 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
20 reasonable attorneys’ fees.

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 201, 201.3, 202, 203**

23 **(Against All Defendants)**

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

26 89. Numerous Class Members are no longer employed by Defendants; they
27 either quit Defendants’ employ or were fired therefrom.

28 90. Defendants failed to pay these Class Members all wages due and certain at

1 the time of termination or within seventy-two (72) hours of resignation.

2 91. The wages withheld from these Class Members by Defendants remained
3 due and owing for more than thirty (30) days from the date of separation from employment.

4 92. Additionally, some if not all Class Members, including Plaintiff, were
5 temporary staffing service employees as described in Labor Code § 201.3. Defendants paid these
6 employees on a biweekly pay period in violation of Labor Code § 201.3 which requires such
7 employees to be paid on a weekly basis. Plaintiff alleges that he and other employees were paid
8 their wages beyond the timeframes set forth in Labor Code § 201.3. Defendants failure to pay
9 timely wages as alleged entitles Class Members to penalties under Labor Code § 203, which
10 provides that an employee's wages shall continue until paid for up to thirty (30) days from the
11 date they were due.

12 93. Under Labor Code § 201, "If an employer discharges an employee, the
13 wages earned and unpaid at the time of discharge are due and payable immediately...." Under
14 Labor Code § 202, "If an employee not having a written contract for a definite period quits his or
15 her employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit,
17 in which case the employee is entitled to his or her wages at the time of quitting."

18 94. Labor Code § 203 further provides: "If an employer willfully fails to pay,
19 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
20 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
21 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
22 therefore is commenced; but the wages shall not continue for more than 30 days...."

23 95. Defendants failed to pay Class Members without abatement, all wages as
24 defined by applicable California law. Specifically, Class Members were not paid all regular and
25 overtime wages because Defendants failed to pay for all hours worked by requiring off the clock
26 work, unlawfully rounding to the detriment of the Class Members, and failing to incorporate
27 non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and
28 pay for overtime, double time, sick pay, and meal and rest break premiums. Moreover,

1 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
2 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
3 was willful within the meaning of Labor Code § 203.

4 96. Defendants' failure to pay wages, as alleged entitles these Class Members
5 to penalties under Labor Code § 203, which provides that an employee's wages shall continue
6 until paid for up to thirty (30) days from the date they were due.

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

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

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

27 99. All wages due and owing to Plaintiff and the Class Members, including as
28 required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in

1 detail above. Additionally, wages required by Labor Code § 1194 and other sections became due
2 and payable to each Class Member in each pay period that he or she was not provided with a
3 meal period or rest period or paid straight or overtime wages or commissions to which he or she
4 was entitled.

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

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

19 **EIGHTH CAUSE OF ACTION**
20 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
21 **AND 1174.5**
22 **(Against All Defendants)**

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

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

1 104. During the course of Plaintiff's and Class Members' employment,
2 Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class
3 Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class
4 Members proper wages, overtime, and premium pay as discussed above.

5 105. Accordingly, Defendants are liable for civil penalties pursuant to the
6 California Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

7 **NINTH CAUSE OF ACTION**
8 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**
9 **(Against All Defendants)**

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

12 107. Under Labor Code § 2802(a) an employer must indemnify its employees for
13 all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties, or of his or her obedience to the directions of the employer.

15 108. Defendants have regularly required Plaintiff to incur business expenses in
16 the course of performing his required job duties for Defendants including for cell phone
17 expenses and mileage. Upon information and belief, Class Members incurred similar costs.
18 These expenses incurred by Plaintiff and Class Members were necessary and required of them in
19 performing their assigned job duties, but Defendants failed to reimburse Class Members for all
20 such necessary expenditures, thus entitling them to reimbursement according to proof as
21 required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders,
22 paragraph 9.

23 109. As a result of the unlawful acts of Defendants, Class Members have been
24 deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of
25 such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**
3 **(Against All Defendants)**

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

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

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

22 113. On July 27, 2023, Plaintiff sent written requests through his counsel to
23 Defendant Eagles Point Security for their payroll records, timecards, and personnel records.
24 However, Plaintiff did not receive the complete records until September 13, 2023, 48 days after
25 Plaintiff's request.

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

28 115. On information and belief, Defendants' failure to provide Plaintiff with all

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

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

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

9 **ELEVENTH CAUSE OF ACTION**
10 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
11 **(Against All Defendants)**

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

14 119. Plaintiff, on behalf of himself, Class Members, and the general public,
15 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
16 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
17 harmful to Class Members and the general public. Plaintiff seeks to enforce important rights
18 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

19 120. Plaintiff is a “person” within the meaning of Business & Professions Code
20 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
21 injunctive relief, restitution, and other appropriate equitable relief.

22 121. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
23 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
24 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
25 compensation for missed meal and rest breaks, and failed to adequately compensate Class
26 Members for all hours worked, due to systematic business practices as alleged herein that cannot
27 be justified, pursuant to the applicable California Labor Code and Industrial Welfare
28 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*

1 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
2 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

22 126. By the conduct alleged herein, Defendants have engaged and continue to
23 engage in a business practice which violates California and federal law, including but not limited
24 to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the
25 California Labor Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for
26 which this Court should issue declaratory and other equitable relief pursuant to California
27 Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct
28 held to constitute unfair competition, including restitution of wages wrongfully withheld.

127. As a proximate result of the above-mentioned acts of Defendants, Class Members have been damaged, in a sum to be proven at trial.

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

TWELFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698, ET SEQ.
(Against All Defendants)

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

130. Plaintiff and the Employees in the Class are also Class Members as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants (“Class Members”) during the relevant time period.

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

132. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California

1 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,
2 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

3 133. More specifically, after complying with the notice procedures of Labor Code §
4 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
5 and other similarly Class Members, a PAGA claim for violations of the above addressed
6 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
7 including as follows:

8 (a) Wage Claims: For failure to provide Plaintiff and the Class Members all earned
9 regular pay and minimum wages for regular hours worked and for failure to pay overtime
10 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
11 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
12 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
13 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
14 to Labor Code § 2699(g)(1);

15 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
16 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
17 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
18 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
19 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
20 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
21 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
22 pursuant to Labor Code § 2699(g)(1);

23 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
24 provide Plaintiff and Class Members with accurate, itemized wage statements and failure to
25 maintain employment records for Plaintiff and Class Members under Labor Code §§ 226, 1174,
26 and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all
27 civil and statutory penalties and wages available and applicable under Labor Code §§ 226€, 226.3,
28 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for

attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

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

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

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

134. As also addressed above, Plaintiff, on behalf of the Class Members, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

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

1 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
2 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
3 for each pay period for which the employee was underpaid in addition to an amount sufficient to
4 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee.

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

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

14 135. Plaintiff has exhausted her administrative remedies by sending a certified letter to
15 the LWDA and Defendants postmarked on **January 18, 2024**, addressing in detail the specific
16 provisions of the Labor Code Defendants have violated and addressing the facts and legal
17 theories to support the alleged violations and requested penalties. The LWDA has not provided
18 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
19 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
20 violations addressed herein and in the PAGA Notice Letter and the original Complaint.

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiff prays for the following relief:

- 23 1. For an order certifying this action as a class action;
- 24 2. For compensatory damages in the amount of the unpaid minimum wages for work
25 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
26 to the filing of this action, as may be proven;
- 27 3. For liquidated damages in the amount equal to the unpaid minimum wage and
28 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 29 4. For compensatory damages in the amount of all unpaid wages, including overtime
30 and double-time pay, as may be proven;
- 31 5. For compensatory damages in the amount of the hourly wage made by Class
32 Members for each missed or deficient meal period where no premium pay was paid therefor from
33 four (4) years prior to the filing of this action, as may be proven;

6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

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

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

9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 204, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

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

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

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

14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

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

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

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

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

19. For an award of attorneys' fees; and

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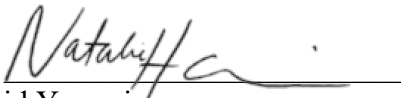
1 20. For such other and further relief as this Court may deem proper and just.

2 DATED: March 22, 2024

D.LAW, INC.

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By: 

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David Yeremian

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Natalie Haritonian

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Jonas Agle

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Attorneys for Plaintiff JUAN DIAZ JR.,
and all others similarly situated.

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DATED: March 22, 2024

By: Natalie Haritonian
David Yerman
Natalie Haritonian
Jonas Agle
Attorneys for Plaintiff JUAN DIAZ JR.,
and all others similarly situated.

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

LAW OFFICE OF DAVID J. HOLLANDER

david@dhollanderlaw.com

San Diego, California 92108

Cell Phone: (619) 933-9858

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Katheryn Perez

Katheryn Perez