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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

JOSHUA J. LOPEZ., an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

VEOLIA NORTH AMERICA, LLC, a
Delaware limited liability company;
VEOLIA WATER NORTH AMERICA
OPERATING SERVICE, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: C24-00068

CLASS ACTION

Assigned for All Purposes To:

Hon. Charles S. Treat

Dept.: 12

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Failure to Pay for On-call Time Under Labor Code §§ 204, 510, 1194;
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint filed: January 9, 2024

1 Plaintiff JOSHUA J. LOPEZ. (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly employees employed by Defendants in California during the
3 relevant period (collectively, “Employees”; individually, “Employee”), complains of Defendants
4 as follows:

5 **INTRODUCTION**

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

15 2. Plaintiff worked as a maintenance technician at Defendants’ facilities and customer
16 worksites in California. Defendants employed other similarly situated Class members as
17 maintenance technicians, and in similar and related positions in connection to water treatment
18 services they provided to Defendants’ customers throughout California. Plaintiff and the other
19 similarly situated Class members worked at Defendants’ behest without being paid all wages due
20 and without being provided all required breaks. More specifically, Plaintiff and the other similarly
21 situated Class members were employed by Defendants and (1) shared similar job duties and
22 responsibilities; (2) were subjected to the same policies and practices; and (3) endured similar
23 violations at the hands of Defendants as the other Employees who served in similar and related
24 positions.

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

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

6 4. Defendant VEOLIA NORTH AMERICA, LLC is a Delaware limited liability
7 company. Defendant VEOLIA NORTH AMERICA, LLC is listed as the employer on the wage
8 statements issued to Plaintiff by Defendants, and upon information and belief to other Class
9 members, with a Milwaukee, Wisconsin address. Upon information and belief, VEOLIA NORTH
10 AMERICA, LLC employs maintenance technicians and dispatches them to work at various
11 customer sites throughout California, including in Contra Costa County where Plaintiff
12 predominantly worked. On information and belief, Defendants maintain operations and locations
13 throughout Contra Costa County and California conducting business wherever their customers are
14 located. VEOLIA NORTH AMERICA, LLC's website explains that: "Veolia companies today
15 operate more than 8,500 water and wastewater facilities and systems around the world, using
16 service delivery models that are designed to fit the specific needs of each individual client."

17 5. Defendant VEOLIA WATER NORTH AMERICA OPERATING SERVICE, LLC
18 is a Delaware limited liability company, which lists its principal address with the California
19 Secretary of State in Boston, Massachusetts with its registered corporate agent located in
20 Glendale, California. It lists its type of business as "Water and Wastewater Treatment." Defendant
21 VEOLIA WATER NORTH AMERICA OPERATING SERVICE, LLC is listed as the employer
22 on the wage statements and other employment documents issued to Plaintiff by Defendants, and
23 upon information and belief to other Class members, with the same Boston, Massachusetts
24 address. Upon information and belief, VEOLIA WATER NORTH AMERICA OPERATING
25 SERVICE, LLC employs maintenance technicians and dispatches them to work at various
26 customer sites throughout California, including in Contra Costa County where Plaintiff
27 predominantly worked. On information and belief, Defendants maintain operations and locations
28 throughout Contra Costa County and California conducting business wherever their customers are

1 located.

2 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
4 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
5 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
6 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
7 obligations and liabilities giving rise to this lawsuit occurred, at least in part, in Contra Costa
8 County, where Defendants are headquartered.

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

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

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FACTUAL BACKGROUND

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

10. During the course of Plaintiff’s and the 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) and for all their overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as maintenance technicians and related positions based out of Defendants’ and customers’ facilities in California.

11. Plaintiff was employed by Defendant as a maintenance technician, with duties that included performing preventive maintenance on wastewater plant equipment systems. Plaintiff generally worked over 50 hours per week, five to six shifts per week, excluding on-call time. Plaintiff’s scheduled hours were generally from 7:00 a.m. through 3:30 p.m., and Plaintiff habitually worked on-call as required. Plaintiff was assigned to an on-call schedule that ranged from 3:30 p.m. to 7:00 a.m., and which he was required to work immediately after his regularly scheduled day shifts.

12. Despite their obligation to maintain accurate timekeeping records for hours worked by the Class members, Defendants maintained improper time record-keeping systems across their

1 California facilities and their work sites. In fact, for all of Plaintiff's employment, Defendants paid
2 Employees by their scheduled hours, or Defendants' desired number of hours rather than their
3 actual hours worked. Employees were purportedly required to record their hours worked on an
4 ADP website, including their meal periods. Defendants' electronic timekeeping system was fully
5 capable of recording Employees' time down to the minute, and in fact, when Plaintiff recorded his
6 time it was recorded at the exact time he made the entry. However, on information and belief,
7 Defendants unlawfully and unfairly rounded Employees' time entries to the nearest quarter hour
8 thereby reducing their number of hours worked. In addition, Defendants regularly asked that
9 Plaintiff, and on information and belief, that other Employees edit or round their time entries to
10 conform to their scheduled hours. Accordingly, Plaintiff's time records did not accurately reflect
11 his hours worked beyond his schedule, and thus Defendants failed to compensate Plaintiff and on
12 information and belief other Employees' actual time worked.

13 13. Employees were also instructed to record a meal period of 30 minutes, even when
14 they did not actually take one or did so untimely or for less than 30 minutes. When dispatched to
15 conduct maintenance work, Defendants required that Employees work through their meal periods
16 and rest breaks in order to complete the assignment within scheduled hours. Moreover,
17 Employees were required to carry "walkie-talkies" and company cell phones during their meal
18 periods and rest breaks and respond to incoming calls. Still, Defendants demanded that Employees
19 record compliant meal periods and if Plaintiff failed to do so he would receive a phone call from
20 management admonishing him for failing to record a compliant meal period.

21 14. On information and belief, Defendants' flawed timekeeping systems failed to
22 accurately record Employees' actual time worked, rounded down, and shaved total hours worked
23 to the detriment of Employees. To maintain the appearance of compliance with Labor laws,
24 Defendants also demanded that Employees record a thirty-minute meal period. In doing so,
25 Defendants effectively automatically deducted thirty-minute meal periods from Employees' time
26 worked. By virtue of deducting thirty minutes for meal periods and manipulating daily hours
27 actually worked to conform to scheduled hours, Defendants further unlawfully deducted many
28 hours Employees actually worked from the total hours Defendants recorded for them for payroll

1 purposes during the relevant pay period.

2 15. The failure to maintain accurate timekeeping and payroll records perpetrated by
3 Defendants has also been exacerbated by other off the clock work Defendants required their
4 Employees to endure. For approximately the first six months of Plaintiff's employment with
5 Defendants, he was required to undergo COVID-19 screenings for several minutes before
6 clocking in for his shifts. In addition, for sanitary and health reasons, Defendants required that
7 Employees don a work uniform consisting of a company t-shirt and jeans before clocking in.
8 Defendants failed to pay Employees for this time they were under Defendants' control. Plaintiff
9 and the class members were also required to work or otherwise remain under Defendants' control
10 after their shift end times, including on site and through after hours work related communications
11 and other work requirements.

12 16. Defendants also required that Employees participate in an on-call schedule without
13 proper compensation. During on-call shifts, Plaintiff and Class members remain under the control
14 of Defendants while waiting for after-hours assignments to come in and are thus required to
15 remain under Defendants' control while also refraining from engaging in personal activities or
16 otherwise using their time for their own purposes. While on-call, Plaintiff and Class members
17 must always keep their assigned work phone on their person, must remain proximate to their
18 general work area, and must respond to incoming calls within one hour or they would face
19 reprimand. During on-call time Employees cannot easily trade in their on-call responsibilities
20 with another employee because there may not be another worker available. Plaintiff was also not
21 permitted to decline the assignment because he was off the clock as doing so would result in a
22 severe reprimand from his manager if he failed to timely respond. Moreover, Plaintiff was only
23 compensated for time spent working fixing the issue despite remaining on call for longer.
24 Plaintiff was also not compensated for time spent on the phone with customers or listening to
25 voicemails and responding to communications from customers.

26 17. Defendants also paid bonuses including for productivity incentives. However, to
27 whatever extent Defendant paid bonuses and any other form of remuneration besides their regular
28 hourly rate to Employees in the Class, Defendants failed to include it in the regular hourly rate

1 used to calculate and pay the overtime that Defendants did pay.

2 18. Defendants followed a similar unlawful practice, upon information and belief, in
3 connection with other Employees in a concerted effort to limit and restrict regular and overtime
4 hours earned by and owing to Plaintiff and the other Class members. Time worked off the clock
5 also caused Plaintiff and other Class members to work beyond eight hours in a shift. As a result
6 of the above-described rounding and other off the clock work, Defendants failed to pay Plaintiff
7 and Class members overtime for several minutes to hours at the end of work shifts which
8 Defendants did not record in any timekeeping or payroll records.

9 19. Defendants also assigned Class members to work on public works projects. In
10 these instances, Defendants were obligated to pay Employees prevailing rates and other fringe
11 benefits required for such public works projects. Upon information and belief, Defendants failed
12 to do so and instead paid Employees in the Class, including Plaintiff, at a rate below the
13 prevailing rates and without other fringe benefits. On information and belief, if and when
14 Defendants paid overtime premium wages, they did so at a rate of 1.5 times the regular pay rate
15 paid to Employees without including the prevailing rate and fringe benefits used to calculate and
16 pay overtime. Upon information and belief, to the extent Defendants paid any wage differentials
17 or bonuses or other forms of remuneration for hours worked in a pay period, Defendants also
18 failed to include them in the regular rate of pay used to calculate and pay overtime wages.

19 20. Plaintiff was therefore not paid for all his hours worked at the required minimum,
20 overtime and double time wage rates due to Defendants' policy and practice of requiring them to
21 work off the clock and without pay. With work shifts generally scheduled for eight hours or
22 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
23 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
24 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
25 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
26 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
27 information and belief, the Class members were bound by similar scheduling and work policies
28 which Defendants required them to follow and endured similar violations at Defendants' hands as

1 Plaintiff.

2 21. Defendants have either failed to maintain timekeeping records for Plaintiff that
3 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
4 required and the actual hours Plaintiff worked or have otherwise declined to produce them to
5 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,
6 Defendants have committed knowing and intentional ongoing violations of the record keeping
7 requirements under the Labor Code §§ 226 and 1174.

8 22. As a result of the above-described unlawful requirements to work off the clock,
9 the failure to accurately record all hours worked and unlawful rounding, and the other wage
10 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
11 paid all wages earned and all wages owed to them by Defendants, including when working more
12 than eight hours in any given day and/or more than forty hours in any given week. As a result of
13 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
14 worked for which they were not adequately and completely compensated, in addition to the hours
15 they were required to work off the clock at their regular rates.

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

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

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

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

16 26. More specifically, Plaintiff worked shifts that entitled him to at least one meal
17 period, but Defendants' required Plaintiff and the Class members to prioritize work over taking
18 proper meal periods. In fact, Defendants made no effort to even schedule or otherwise account for
19 time for Plaintiff and the Class members to use for duty-free, net thirty minute meal periods.
20 Moreover, Employees were required to carry "walkie-talkies" and company cell phones during
21 their meal periods and rest breaks and respond to incoming calls. To the extent Defendants
22 required Plaintiff to work over ten hours on a work shift, Defendants also failed to provide second
23 meal periods and Defendants have produced no evidence of premium payments for meal period
24 violations under Labor Code 226.7.

25 27. Defendants thus failed to provide all the legally required unpaid, off-duty meal
26 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
27 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
28 members were required to perform work as ordered by Defendants for more than five hours during

1 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
2 followed a practice of requiring off the clock work and rounding and time shaving in a manner
3 that would impact when Employees were to receive meal periods and rest breaks and required
4 them to respond to work calls and inquiries and other demands during breaks, thus leading to
5 further violations.

6 28. Upon information and belief, Defendants' systems did not automatically generate a
7 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
8 into a work shift or in the event the time punch records reflected a meal period of less than thirty
9 minutes. However, upon information and belief, in the event Defendants did pay any meal period
10 premiums, they did so at the employee's customary regular rate of hourly compensation without
11 including all forms of remuneration in that hourly rate calculation, for example by omitting
12 bonuses, wage differentials and prevailing wages and the like from the rate at which meal
13 premiums were paid.

14 29. As a result, Defendants' failure to provide Plaintiff and the Class members with all
15 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
16 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
17 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
18 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
19 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
20 policies and practices. On the occasions when Plaintiff and the Class members were provided with
21 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
22 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
23 occurred in one or more of the following manners:

- 24 (a) Class members were not provided full thirty-minute duty free meal periods
25 for work days in excess of five hours and were not compensated one hour's
26 wages in lieu thereof, all in violation of, among others, Labor Code §§
27 226.7, 512, and the applicable Industrial Welfare Commission Wage
28 Order(s);

- 1 (b) Class members were not provided second full thirty-minute duty free meal
2 periods for work days in excess of ten hours;
- 3 (c) Class members were required to work through at least part of their daily
4 meal period(s);
- 5 (d) Meal periods were provided after five hours of continuous work during a
6 shift; and
- 7 (e) Class members were restricted in their ability to take a full thirty-minute
8 meal period and were required to carry “walkie-talkies” and company cell
9 phones during their meal periods and were otherwise required to remain
10 under Defendants’ control during meal periods.

11 30. Similar violations resulted from Defendants’ failure to authorize and permit
12 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
13 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
14 were either not authorized permitted the opportunity to take a rest break, or were required to
15 remain under Defendants’ control and respond to instructions from management and job and
16 customer demands if and when they even attempted to take one. Upon information and belief,
17 Defendants also failed to authorize and permit employees to leave the worksite during rest breaks,
18 evidencing Defendants’ policy and practice of requiring Plaintiff and the Class members to
19 remain under their control during required off-duty rest break times.

20 31. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
21 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
22 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
23 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
24 during the relevant period, meaning Defendants’ rest break policy was not to schedule or
25 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
26 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
27 on shifts over ten hours. Given the work demands, and pressure from Defendants’ management,
28 Plaintiff and the Class members were compelled to not take rest breaks despite working extended

1 shifts. Defendants have produced no evidence of any payments for rest break violations under
2 Labor Code § 226.7. To the extent Defendants have paid any such premiums, upon information
3 and belief they failed to include all forms of remuneration, including bonuses, wage differentials,
4 prevailing wages and the like in the regular rate at which Defendants paid the premium.

5 32. Defendants' uniformly applied policies and practices thus resulted in untimely and
6 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
7 members worked shifts of at least eight hours, which required at least two rest breaks, and often
8 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
9 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
10 permitted to take a second or a third break, and those that were provided were often late and
11 generally interrupted by job duties and requirements.

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

- 24 (a) Class members were required to work without being provided a minimum
25 ten minute rest period for every four hours or major fraction thereof worked
26 and were not compensated one hour of pay at their regular rate of
27 compensation for each workday that a rest period was not provided, and to
28 the extent Defendants paid any premiums, they failed to include all forms of

1 remuneration in the regular rate used to calculate and pay them.

2 (b) Class members were not authorized and permitted to take timely rest periods
3 for every four hours worked, or major fraction thereof;

4 (c) Class members were required to remain on duty and under Defendants'
5 control during rest periods or otherwise had their rest periods interrupted by
6 work demands.

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

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

1 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.”

2 Plaintiff accordingly seeks this relief available for Defendants’ failure to provide Employees with
3 all their required and earned sick days and all their COVID-19 supplemental sick leave in
4 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
5 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
6 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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

19 37. As a result of these illegal policies and practices, Defendants also engaged in and
20 enforced the following additional unlawful practices and policies against Plaintiff and the Class
21 members he seeks to represent:

- 22 (a) failing to pay all wages owed to Class members who either were discharged,
23 laid off, or resigned in accordance with the requirements of Labor Code §§
24 201, 202, 203;
- 25 (b) failing to pay all wages owed to the Class members twice monthly in
26 accordance with the requirements of Labor Code § 204;
- 27 (c) failing to pay Class members all wages owed, including all meal and rest
28 period premium wages, and failing to pay them at the regular rate of

1 compensation;

2 (d) failing to maintain accurate records of Class members' hours worked and
3 earned wages and meal periods in violation of Labor Code §§ 226 and
4 1174(d) and section 7 of the applicable IWC Wage Orders; and

5 (e) failing to produce timekeeping records in response to Plaintiff's timely and
6 lawful request to receive them under these authorities.

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

24 39. Defendants also provided Plaintiff and the Class members with wage statements
25 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
26 For the same reasons as explained above, Plaintiff and the Class members were provided with
27 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
28 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants

1 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
2 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
3 were aware that Plaintiff and the Class members worked more total hours than were reflected on
4 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.
5 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
6 the actual hours they worked in total during a pay period and the rates they were paid for those
7 hours worked.

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

17 41. Defendants also required Plaintiff and the Class members to work hours off the
18 clock for which they were not compensated. They were required to endure off the clock work
19 addressed above, including during interrupted or otherwise on-duty meal and rest periods and were
20 not provided with sick pay and supplemental sick leave and were subjected to systematic off the
21 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted
22 on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
23 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
24 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
25 two hours of their resignation, as required by California law, including Labor Code § 203.

26 42. Plaintiff has also requested records from Defendants and they have failed to
27 constructively respond or to fully respond. Therefore, Plaintiff also asserts that Defendants
28 followed a consistent policy of denying Plaintiff and Class members the right to inspect and

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

2 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
3 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
4 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
5 1194, 1194.2 1197, 1198, 1198.5, 1199, 2810.5, and 2698 *et seq.*, and California Code of
6 Regulations, Title 8, section 11000 *et seq.*

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

11 **CLASS ALLEGATIONS**

12 45. Plaintiff brings this class action on behalf of himself, and all others similarly
13 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
14 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
15 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
16 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
17 hourly employees within the State of California.” This includes maintenance technicians and those
18 in similar and related positions in connection to wastewater treatment services provided to
19 Defendants’ customers throughout California. Further, Plaintiff seeks to represent the Subclasses
20 composed of and defined as follows:

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

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

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

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

5 e. Subclass 5. On-Call Subclass: All Class members who were not compensated for
6 all hours worked for Defendants at the required rates of pay, including for all hours worked in
7 excess of eight in a day and/or forty in a week while they were on-call.

8 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
9 applicable limitations period, were not provided with accurate itemized wage statements.

10 g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members
11 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
12 including by requiring off the clock work.

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

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

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

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

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

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

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

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

19 **A. Numerosity**

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

26 **B. Commonality**

27 50. There are questions of law and fact common to the Class that predominate over any
28 questions affecting only individual Class members. The common questions are numerous and

1 substantial and flow from Defendants' uniform policies and/or practices of violating the California
2 Labor Code addressed above. As such, these common questions predominate over individual
3 questions concerning each individual Class Member's showing as to his or her eligibility for
4 recovery or as to the amount of damages. These common questions of law and fact include:

- 5 a. Whether Defendants failed to pay Employees minimum wages;
- 6 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 7 c. Whether Defendants failed to pay Employees overtime as required under Labor
8 Code § 510;
- 9 d. Whether Defendants failed to compensate Employees for on-call time;
- 10 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
11 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
12 premium pay in lieu thereof;
- 13 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
14 Orders, by failing to authorize and permit Employees to take requisite rest breaks,
15 or provide premium pay in lieu thereof;
- 16 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
17 inaccurate wage statements and wage statements that omitted many of the Section
18 226(a) requirements.
- 19 h. Whether Defendants violated Labor Code § 221;
- 20 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
21 wages and compensation due and owing at the time of termination of employment;
- 22 j. Whether Defendants' conduct was willful;
- 23 k. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
24 IWC Wage Orders by failing to maintain accurate records of Class members'
25 earned wages and work periods;
- 26 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
27 Employees during the relevant time period for all hours worked, whether regular or
28 overtime;

- 1 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
2 wages earned at least twice monthly;
- 3 n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
4 providing employees with all required sick days and COVID-19 supplemental sick
5 leave;
- 6 o. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 7 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 8 q. Whether Employees are entitled to equitable relief pursuant to Business and
9 Professions Code § 17200 *et seq.*

10 **C. Typicality**

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

17 **D. Adequacy of Representation**

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

21 **E. Superiority of Class Action**

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

27 54. As to the issues raised in this case, a class action is superior to all other methods for
28 the fair and efficient adjudication of this controversy, as joinder of all Class members is

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

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

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

25 57. Plaintiff and the Employees in the Class did not discover the fact that they were
26 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
27 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
28 trial by jury, to collectively organize and oppose unlawful pay practices under California law as

1 well as obtain injunctive relief preventing such practices from continuing. As a result, the
2 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
3 discovered their claims.

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY MINIMUM WAGES**
6 **(Against All Defendants)**

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

9 59. Defendants failed to pay Employees minimum wages for all hours worked.
10 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
11 would work hours and not receive wages, including as alleged above in connection with off the
12 clock work, including all the time required to remain on duty and under Defendants' control
13 during breaks and due to the work demands placed upon them by Defendants' management and
14 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
15 policies required systematic off the clock work and underpayment of all wages owed to
16 Employees over a period of time, while benefiting Defendants. During the relevant time period,
17 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
18 including by requiring systematic off the clock work. To the extent any local wage ordinances
19 were also applicable to paying the employees an hourly rate above the minimum wage rate,
20 Defendants failed to comply with the local wage ordinances. To the extent any prevailing rates
21 and fringe benefits were also applicable to paying the employees an hourly rate above the
22 minimum wage rate, Defendants failed to comply with the prevailing rate requirements.
23 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
24 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
25 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
26 wage pay.

27 60. In California, employees must be paid at least the applicable state minimum wage
28 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and

1 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
2 California Labor Code § 204, other applicable laws and regulations, and public policy, an
3 employer must timely pay its employees for all hours worked. Defendants failed to do so.

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

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

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

21 64. In committing these violations of the California Labor Code, Defendants
22 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
23 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
24 time worked by Plaintiff and other members of the Class, including by requiring off the clock
25 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
26 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
27 Welfare Commission requirements and other applicable laws and regulations. As a result of these
28 violations, Defendants also failed to timely pay all wages earned in accordance with California

1 Labor Code § 1194.

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

6 66. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
7 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
8 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
9 pay each employee minimum wages.

10 67. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
11 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
12 interest thereon.

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

16 69. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
17 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
18 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
19 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
20 members of the Class further request recovery of all unpaid wages, according to proof, interest,
21 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
22 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
23 wage compensation is determined to be owed to the Class members who have terminated their
24 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
25 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
26 which penalties are sought herein on behalf of these Class members. Defendants’ failure to timely
27 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
28 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as

1 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
2 members are entitled to seek and recover statutory costs.

3 **SECOND CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

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

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

22 73. Defendants had a consistent policy of not paying Employees wages for all hours
23 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
24 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
25 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
26 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
27 clock work, as detailed above.

28 74. Defendants thus had a consistent policy of not paying Employees wages for all

1 hours worked, including hours at their required regular, overtime, and double-time rates.
2 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
3 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
4 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
5 Class members all earned and owed straight time and overtime wages and other benefits, in
6 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
7 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
8 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
9 employees to work through meal periods or remain under Defendants' control when they were
10 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
11 respond to demands from customers and managers.

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

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

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

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

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

16 79. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
18 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
19 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
20 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
21 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
22 any order or ruling of the commission.”

23 80. Consequently, pursuant to the California Labor Code, including Labor Code §§
24 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
25 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
26 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
27 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
28 against Defendants, and each of them, and any additional sums as provided by the Labor Code

1 and/or other statutes.

2 **THIRD CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

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

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

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

25 85. Moreover, Defendants failed to compensate Employees for each meal period not
26 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
27 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
28 employee a meal period in accordance with this section, the employer shall pay the employee one

1 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
2 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
3 period premiums, they upon information and belief underpaid them by miscalculating the regular
4 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
5 compensate the Employees in the Class for each meal period not provided or inadequately
6 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
7 Wage Order.

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

14 **FOURTH CAUSE OF ACTION**

15 **REST-BREAK PERIOD LIABILITY UNDER LABOR CODE § 226.7**

16 **(Against All Defendants)**

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

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

22 89. Employees consistently worked consecutive four hour shifts and were generally
23 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
24 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
25 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
26 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
27 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants made no
28 effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks.

1 Employees were often required to work or to otherwise remain under Defendants' control during
2 rest periods, including by responding to work requirements, being prohibited from leaving the
3 worksites, and had breaks provided untimely as a result of the above described off the clock work.

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

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

11 92. Defendants failed to authorize and permit Plaintiff and the Class members to take
12 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
13 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
14 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
15 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
16 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
17 compensation by not including all forms of remuneration in it. Defendants thus failed to
18 compensate the Employees in the Class for each rest period not provided or inadequately
19 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
20 Wage Order.

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

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FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ON-CALL PAY UNDER LABOR CODE §§ 204, 510, 1194,
and 8 CCR § 11050(3)(4)
(Against All Defendants)

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

95. Wage Order 5-2001 provides that “hours worked means the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” (*Internal quotations omitted*, Cal. Code Regs., tit. 8, § 11050(K)).

96. As set forth herein, Defendants followed a common practice and policy of requiring Plaintiff and Employees to remain on-call after normal scheduled hours, without proper compensation. Defendants scheduled Employees for on-call shifts on the same day as the employees were also scheduled for regular shifts (e.g., by tacking the on-call shift at the end of the regular shift). Plaintiff and Employees remain under the control of Defendants while they are under Defendant’s control and on-call waiting for after-hours work orders to come in and thus were compelled to refrain from other personal activities and could not use their off-duty time for their own purposes. During this waiting time, Employees cannot easily trade in their on-call responsibilities with another employee because there may not be another worker available for coverage.

97. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff and the Class have been damaged in that Plaintiff and the Class have not been paid all required wages, including overtime pay, associated with their on-call work.

98. The forgoing uncompensated work caused Plaintiff and Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling them to overtime and double-time wages which were systemically denied.

99. 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.

1 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
2 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
3 compensation earned by Employees. Each such failure to make a timely payment of compensation
4 to Employees constitutes a separate violation of California Labor Code § 204.

5 100. Employees have been damaged by these violations of California Labor Code §§ 204
6 and 510 (and the relevant orders of the Industrial Welfare Commission).

7 101. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
9 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
10 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
11 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
12 against Defendants, and each of them, and any additional sums as provided by the Labor Code
13 and/or other statutes.

14 **SIXTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 226**
16 **(Against All Defendants)**

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

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

26 104. Defendants failed to provide Plaintiff and the similarly situated Employee Class
27 members with accurate itemized wage statements in writing, as required by the Labor Code and
28 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to

1 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
2 including for all overtime and double time hours worked and for deficient meal periods and rest
3 breaks, all of which Defendants knew or reasonably should have known were owed to the
4 Employees, as alleged above.

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

17 106. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
18 and intentional failure to provide them with the wage and hour statements as required by law and
19 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
20 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
21 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
22 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
23 wage statement alone one or more of the following: (i) The amount of the gross wages or net
24 wages paid to the employee during the pay period or any of the other information required to be
25 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
26 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
27 wages paid to the employee during the pay period, (iii) The name and address of the employer
28 and, (iv) The name of the employee and only the last four digits of his or her social security

1 number or an employee identification number other than a social security number. For purposes
2 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
3 objective standard] would be able to readily ascertain the information without reference to other
4 documents or information.

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

13 108. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
14 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
15 Class suffered injuries, including among other things confusion over whether they received all
16 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
17 them to make mathematical computations to analyze whether the wages paid in fact compensated
18 them correctly for all hours worked.

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

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

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

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

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

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

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

115. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day,

1 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
2 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
3 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
4 calendar days following the close of the payroll period.” As detailed above, Defendants
5 maintained a consistently applied policy and practice of not paying all wages earned between the
6 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
7 between the 16th and the last day of the month between the 1st and 10th day of the following month.
8 Defendants similarly failed to pay all wages earned by not more than seven calendar days
9 following the close of the payroll period.

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

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

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

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

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

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

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

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

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

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

1 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
2 “violates...any provision of this chapter or any order or ruling of the commission.”

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

7 **TENTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

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

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

23 130. Defendants have maintained a common unlawful policy and practice of failing to
24 accurately record all hours worked and all meal period start and end times.

25 131. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
26 knew wages to be due but failed to pay them.

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

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

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

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

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

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

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

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

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

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

6 **TWELFTH CAUSE OF ACTION**
7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
8 **(Against All Defendants)**

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

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

16 143. Plaintiff is a “person” within the meaning of Business & Professions Code
17 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
18 injunctive relief, restitution, and other appropriate equitable relief.

19 144. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
20 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
21 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
22 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
23 Class members for all hours worked, due to systematic business practices as alleged herein that
24 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
25 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
26 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
27 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

28 145. Wage-and-hour laws express fundamental public policies. Paying employees their

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

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

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

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

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

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

28 151. Unless restrained by this Court Defendants will continue to engage in such

1 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
2 should make such orders or judgments, including the appointment of a receiver, as may be
3 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
4 deceptive practice prohibited by the Business & Professions Code, including but not limited to
5 the disgorgement of such profits as may be necessary to restore Employees to the money
6 Defendants have unlawfully failed to pay.

7 **THIRTEENTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

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

23 155. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
24 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
25 including the penalty provisions, without limitation, based, inter alia, on the following California
26 Labor Code sections: 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1,
27 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198,
28 1198.5, 1199, 2810.5, 2698, and 2699, *et seq.*

1 156. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
4 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
5 including as follows:

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

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

21 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
22 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
23 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
24 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
26 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
27 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
28 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, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable 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 Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure To Provide On-Call Pay: For Defendants failure to provide Employees with all their on-call pay in violation of Labor Code §§ 510, 1194(a), 1197, and 1198, Wage Order 16-2001 and 8 § CCR 11050 and civil and statutory penalties available and applicable under Labor Code §§ 204, 510, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting 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).

157. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also

1 seeks the penalties and remedies set forth in Labor Code § 558, which states:

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

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

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

20 158. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
21 the LWDA and Defendants on January 9, 2024 (LWDA-CM-1004014-24) addressing in detail the
22 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
23 theories to support the alleged violations and requested penalties. The LWDA has not provided
24 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
25 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
26 addressed herein and in the PAGA Notice letter and the original Complaint.

27 **RELIEF REQUESTED**

28 WHEREFORE, Plaintiff prays for the following relief:

- 29 1. For an order certifying this action as a class action;
- 30 2. For compensatory damages in the amount of the unpaid minimum wages for work
31 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
32 the filing of this action, as may be proven;
- 33 3. For liquidated damages in the amount equal to the unpaid minimum wage and
34 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 35 4. For compensatory damages in the amount of all unpaid wages, including overtime

1 and double-time pay, as may be proven;

2 5. For compensatory damages in the amount of the hourly wage made by Employees
3 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
4 years prior to the filing of this action, as may be proven;

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

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

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

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

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

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

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

18 13. For restitution for unfair competition pursuant to Business & Professions Code
19 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

24 16. For penalties under Labor Code § 558, as may be proven;

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

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

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

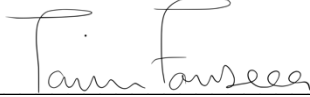
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- 20. For an award providing for the payment of the costs of this suit;
- 21. For an award of attorneys' fees; and
- 22. For such other and further relief as this Court may deem proper and just.

DATED: March 14, 2024

D.LAW, INC.

By 
Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Joshua J. Lopez
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: March 14, 2024

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Joshua J. Lopez.
and the putative class

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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.

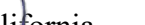
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☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[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.

Executed on March 14, 2024, at Glendale, California.

California.

A handwritten signature in blue ink, appearing to read 'Sasha Lee' or 'Sasha Zambrano', written over a horizontal line.

Sasha Zambrano