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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

RICHARD WEST, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

METAL ART OF CALIFORNIA, INC. d/b/a
SIGN MART, a California corporation;
METAL ART OF CALIFORNIA, a business
entity of unknown form; PLASTICS PLUS, a
business entity of unknown form; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 30-2024-01381223-CU-OE-CXC

CLASS ACTION

Assigned for All Purposes To:

Hon. William Claster
Dept.: CX101

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff RICHARD WEST (“Plaintiff”) brings this action on behalf of himself and
3 the Class Members who are defined as “all current and former employees within the State of
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were
5 employed as non-exempt hourly employees by Defendants METAL ART OF CALIFORNIA, INC
6 d/b/a SIGN MART, a California corporation; METAL ART OF CALIFORNIA, a business entity
7 of unknown form; PLASTICS PLUS, a business entity of unknown form; and DOES 1 through
8 50” (all defendants being collectively referred to herein as “Defendants”).

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

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

16 **THE PARTIES**

17 **A. The Plaintiff**

18 4. Plaintiff RICHARD WEST resides in California, during the time period relevant to
19 this Complaint, was employed by Defendants as a non-exempt hourly employee within the State
20 of California.

21 **B. The Defendants**

22 5. Defendant METAL ART OF CALIFORNIA, INC. is a California corporation
23 doing business as SIGN MART and is registered with the California Secretary of State. Defendant
24 METAL ART OF CALIFORNIA, INC. d/b/a SIGN MART has been the employer listed on
25 employment records issued to Plaintiff during the relevant time period that Plaintiff was employed
26 with Defendants.

27 6. Defendant METAL ART OF CALIFORNIA is a business entity of unknown form
28 and has been the employer listed on employment records issued to Plaintiff during the relevant

1 time period that Plaintiff was employed with Defendants.

2 7. Defendant PLASTICS PLUS is a business entity of unknown form and has been
3 the employer listed on employment records issued to Plaintiff during the relevant time period that
4 Plaintiff was employed with Defendants.

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

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

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

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

1 **JURISDICTION AND VENUE**

2 12. 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 Class Members of Defendants pursuant to
5 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
6 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
7 the obligations and liabilities giving rise to this lawsuit occurred in part in Orange County.
8 Defendants maintain and operate facilities in Orange County and employs Plaintiff and other Class
9 Members in Orange County, while doing business throughout California.

10 **FACTUAL BACKGROUND**

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

22 14. During the course of Class Members' employment with Defendants, they were not
23 paid all wages they were owed, including for all work performed resulting in off the clock work.
24 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
25 instance, at the beginning of Class Members' shift, they were required to carry out opening
26 procedures and wait for a supervisor to arrive before they could clock in. Additionally, Class
27 Members were required to wait in line before clocking in to their shift. Moreover, after the end of
28 their shift, Class Members had to carry out closing procedures off the clock. Class Members were

1 required to perform work duties such as running errands while they were off the clock. Class
2 Members were also required to work during their meal breaks resulting in further off the clock.
3 Additionally, Class Members were required to answer and respond to various alerts on their
4 personal cell phones before and after their shift.

5 15. Defendants also failed to pay Class Members all wages due and owing because
6 Defendants failed to incorporate non-discretionary, performance-based bonuses and/or
7 commissions into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC
8 Wage Orders under California law, Defendants did not incorporate these non-discretionary
9 bonuses and/or commissions paid to the Class Members into the regular rate of pay Defendants
10 used to calculate and pay for overtime, sick pay, and meal and rest break premiums.

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

22 17. Plaintiff was therefore not paid for all his hours worked at the required minimum,
23 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
24 work off the clock and without pay. With work shifts generally scheduled for eight hours or more,
25 this unpaid off the clock work resulted in Plaintiff and the Class members working past eight
26 hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their
27 regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by failing
28 to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a

1 work week, and all hours over twelve in a day at the required double time rate. Upon information
2 and belief, the Class members were bound by similar scheduling and work policies which
3 Defendants required them to follow and endured similar violations at Defendants' hands as
4 Plaintiff.

5 18. By implementing policies, programs, practices, procedures and protocols which
6 resulted in off the clock work, unlawful rounding by Defendants, and the failure to incorporate
7 non-discretionary bonuses and/or commissions into the regular rate of pay, Defendants' willful
8 actions resulted in the systematic underpayment of wages to Class Members, including
9 underpayment of overtime pay to Class Members over the relevant time period. For example, the
10 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
11 pay later than they should have.

12 19. As a result of the above described requirements to work off the clock, unlawful
13 rounding by Defendants, the failure to incorporate non-discretionary bonuses and/or commissions
14 into the regular rate of pay, and the other wage violations they endured at Defendants' hands,
15 Class Members were not properly paid all wages earned and all wages owed to them by
16 Defendants, including when working more than eight (8) hours in any given day and/or more than
17 forty (40) hours in any given week, and double-time rates for all hours worked in excess of twelve
18 (12) hours in a day.

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

26 21. Therefore, from at least four (4) years prior to the filing of this lawsuit and
27 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
28 Members for all hours worked, and failing to pay minimum wages for all time worked, as required

1 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
2 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
3 Orders as the actual times when Class Members were under the control and direction of
4 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
5 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
6 including underpayment of overtime pay to Class Members over a period of time.

7 22. Therefore, from at least four (4) years prior to the filing of this lawsuit and
8 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
9 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
10 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
11 Class Members their true and correct overtime compensation at premium overtime rates for all
12 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
13 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
14 and the corresponding sections of IWC Wage Orders.

15 23. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
16 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
17 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
18 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
19 without receiving a lawful and timely meal break. In addition to untimely meal periods,
20 Defendants also required Class Members to respond to work demands. Defendants placed their
21 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
22 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
23 ones, because the demands of the job would not avail them the opportunity to take a lawfully
24 uninterrupted and off duty meal and/or rest break. To the extent Class Members were permitted to
25 take a meal and/or rest break, they were required to carry radios and/or cell phones and respond to
26 work demands.

27 24. On the occasions when Class Members worked over 10 hours in a shift, Defendants
28 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a

1 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
2 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
3 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
4 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
5 each meal period or rest break that Defendants failed to provide or deficiently provided.

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

13 26. Meal period violations thus occurred in one or more of the following manners:

- 14 (a) Class Members were not provided full thirty-minute duty free meal periods
15 for work days in excess of five (5) hours and were not compensated one (1)
16 hour's wages in lieu thereof, all in violation of, among others, Labor Code
17 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
18 Order(s);
- 19 (b) Class Members were not provided second full thirty-minute duty free meal
20 periods for work days in excess of ten (10) hours;
- 21 (c) Class Members were required to work through at least part of their daily
22 meal period(s);
- 23 (d) Meal periods were provided after five (5) hours of continuous work during
24 a shift; and
- 25 (e) Class Members were restricted in their ability to take a full thirty-minute
26 meal period.
- 27 (f) Class Members were required to be on duty to monitor their cell phones
28 and/or radios during their break.

1 27. Class Members were also not authorized and permitted to take lawful rest periods,
2 were systematically required by Defendants to work through or during breaks and were not
3 provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability
4 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
5 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
6 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
7 less than ten minutes for every work period of four or more consecutive hours; or major fraction
8 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest
9 breaks were not provided or were deficiently provided.

10 28. Rest period violations therefore arose in one or more of the following manners:

- 11 (a) Class Members were required to work without being provided a minimum
12 ten (10) minute rest period for every four (4) hours or major fraction
13 thereof worked and were not compensated one (1) hour of pay at their
14 regular rate of compensation for each workday that a rest period was not
15 provided;
- 16 (b) Class Members were not authorized and permitted to take timely rest
17 periods for every four hours worked, or major fraction thereof; and
- 18 (c) Class Members were required to remain on-duty during rest periods or
19 otherwise had their rest periods interrupted by work demands.
- 20 (d) Class Members were required to be on duty to monitor their cell phones
21 and/or radios during their break.

22 29. Defendants also consistently failed to issue accurate itemized wage statements as
23 required by Labor Code § 226(a). Specifically, the wage statements fail to include the total hours
24 worked. Thus, the wage statements do not comply with Labor Code § 226(a)(2). Additionally, the
25 wage statements fail to include the rate at which all items are paid. Therefore the wage statements
26 do not comply with Labor Code § 226(a)(9). Additionally, the wage statements fail to provide the
27 full name of the legal entity that is the employer. Thus, the wage statements do not comply with
28 Labor Code § 226(a)(8). Moreover, the wage statements given to Class Members failed to

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

10 30. From at least four (4) years prior to filing this lawsuit and continuing to the present,
11 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
12 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
13 required by California wage-and-hour laws. Specifically, Class Members did not receive their final
14 paycheck until they next regularly scheduled pay date. Class Members were not paid all regular
15 and overtime wages because Defendants failed to pay for all hours worked, required off the clock
16 work, unlawfully rounded time entries to the detriment of Class Members, and failed to
17 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
18 calculate and pay for overtime, sick pay, and meal and rest break premiums. Additionally,
19 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
20 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
21 was willful within the meaning of Labor Code § 203.

22 31. Additionally, from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants have regularly required Class Members to incur business
24 expenses in the course of performing their required job duties for Defendants including for cell
25 phone expenses and mileage costs. Upon information and belief, Class Members incurred similar
26 costs. These expenses incurred by Class Members were necessary and required of them in
27 performing their assigned job duties, but Defendants failed to reimburse Class Members for all
28 such necessary expenditures, thus entitling them to reimbursement according to proof as required

1 under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

2 32. Additionally, pursuant to the Occupational Safety and Health Administration,
3 employers must keep the thermostat between 68 and 78 degrees Fahrenheit. California Wage
4 Order 8 states: “the temperature maintained in each work area shall provide reasonable comfort
5 consistent with industry-wide standards for the nature of the process and the work performed.
6 Where the nature of the employment requires a temperature of less than 60 degrees Fahrenheit, a
7 heated room shall be provided to which employees may retire for warm, and such room shall be
8 maintained at not less than 68 degrees Fahrenheit. A temperature of not less than 68 degrees
9 Fahrenheit shall be maintained in the toilet rooms, resting rooms, and change rooms during hours
10 of use.” Here, the temperature in the warehouse was above what is legally allowed.

11 33. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
12 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,
13 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 et seq., 2802 and
14 California Code of Regulations, Title 8, section 11000 *et seq.*

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

19 **CLASS ALLEGATIONS**

20 35. Plaintiff seeks to represent the Subclasses 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 Class Member’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 Class Members 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 Class Member's regular rate of pay in lieu
5 thereof.

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

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

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

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

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

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

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

28 37. Defendants, as a matter of company policy, practice and procedure, and in violation

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

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

A. Numerosity

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

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

B. Commonality

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

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;

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

C. Typicality

42. The claims of the named plaintiff is typical of those of Class Members. The Class

Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

46. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
2 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
3 set forth the subject and nature of the instant action. The Defendants' own business records can be
4 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
5 that any further notice is required additional media and/or mailings can be used.

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

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

22 **(Against All Defendants)**

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

25 50. Defendants failed to pay Class Members minimum wages for all hours worked.
26 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
27 Class Members for all hours worked. Class Members would work hours and not receive wages,
28 including as alleged above in connection with off the clock work and unlawful rounding of hours.

1 Additionally, Defendants failed to incorporate non-discretionary bonuses and/or commissions into
2 the regular rate of pay used to calculate and pay overtime. Defendants, and each of them, have
3 intentionally and improperly changed, adjusted and/or modified the hours of Class Members,
4 which resulted in off the clock work and underpayment of all wages owed to Class Members over
5 a period of time, while benefiting Defendants. During the relevant time period, Defendants thus
6 regularly failed to pay minimum wages to Class Members, to their detriment. Additionally,
7 Defendants had a consistent policy of failing to pay Class Members for hours worked during
8 alleged meal and rest periods for which Class Members were consistently denied, as also
9 addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy
11 and practice that denied accurate compensation to Class Members as to minimum wage pay.

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

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

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

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

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

1 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
2 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
3 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
4 be used as a credit against a minimum wage obligation.

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

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

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

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

23 60. Defendants have the ability to pay minimum wages for all time worked and have
24 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
25 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

26 61. Wherefore, Class Members are entitled to recover the unpaid minimum wages
27 (including double minimum wages), liquidated damages in an amount equal to the minimum
28 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant

1 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
2 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
3 assessment of any statutory penalties against Defendants, in a sum as provided by the California
4 Labor Code, including § 558, and/or other applicable statutes.

5 **SECOND CAUSE OF ACTION**

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

7 **(Against All Defendants)**

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

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

16 64. By their conduct, as set forth herein, Defendants violated California Labor Code §
17 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
18 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
19 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
20 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
21 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
22 eight (8) hours on any seventh day of work in a workweek.

23 65. Defendants had a consistent policy of not paying Class Members wages for all
24 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
25 hours worked as addressed above. Additionally, Defendants failed to incorporate non-
26 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay
27 overtime. Defendants, and each of them, have intentionally and improperly rounded, changed,
28 adjusted and/or modified certain employees’ hours, including Plaintiff’s, in order to avoid paying

1 Class Members all earned and owed straight time and overtime wages and other benefits, in
2 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
3 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
4 have also violated these provisions by requiring Class Members to work through portions of their
5 meal period. Therefore, Class Members were not properly compensated, nor were they paid
6 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
7 given week. Based on information and belief, Defendants did not make available to Class
8 Members a reasonable protocol for correcting time records when Class Members worked overtime
9 hours or to fix incorrect time entries or those that Defendants unlawfully rounded to the Class
10 Members' detriment.

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

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

27 68. Defendants' failure to pay compensation in a timely fashion also constituted a
28 violation of California Labor Code § 204, which requires that all wages shall be paid

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

6 69. Class Members have been damaged by these violations of California Labor Code
7 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

8 70. Consequently, pursuant to the California Labor Code, including Labor Code §§
9 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
10 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
11 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
12 assessment of any statutory penalties against Defendants, and each of them, and any additional
13 sums as provided by the Labor Code and/or other statutes.

14 **THIRD CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

24 73. Defendants failed to provide Class Members with meal periods as required under
25 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
26 resulted in Class Members consistently having to work through their scheduled meal breaks
27 because the demands of the job would not avail them the opportunity to take a lawfully
28 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions

1 when Class Members worked more than ten (10) hours in a given shift, they did so without
2 receiving a second uninterrupted thirty (30) minute meal period as required by law. To the extent
3 Class Members attempted to take a meal break, they were required to carry radios and/or cell
4 phones and respond to work demands.

5 74. Defendants thus failed to provide Class Members with meal periods as required by
6 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
7 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
8 during breaks.

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

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

21 **FOURTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

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

1 79. Class Members consistently worked consecutive four (4) hour shifts and were
2 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
3 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
4 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
5 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
6 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
7 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
8 consistently having to work through their scheduled rest breaks because the demands of the job
9 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break. To
10 the extent Class Members attempted to take a rest break, they were required to carry radios and/or
11 cell phones and respond to work demands. Thus, Class Members were consistently denied of their
12 rest breaks.

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

17 81. Defendants, and each of them, have therefore intentionally and improperly denied
18 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
19 the applicable IWC Wage Orders.

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

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

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

86. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements fail to include the total hours worked. Thus, the wage statements do not comply with Labor Code § 226(a)(2). Additionally, the wage statements fail to include the rate at which all items are paid. Therefore the wage statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements fail to provide the full name of the legal entity that is the employer. Thus, the wage statements do not comply with Labor Code § 226(a)(8). Moreover, the wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

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

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

27 89. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
28 § 226(a), Class Members suffered injuries, including among other things confusion over whether

1 they received all wages owed them, the difficulty and expense involved in reconstructing pay
2 records, and forcing them to make mathematical computations to analyze whether the wages paid
3 in fact compensated them correctly for all hours worked.

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

10 **SIXTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 203**
12 **(Against All Defendants)**

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

15 92. Numerous Class Members are no longer employed by Defendants; they either quit
16 Defendants' employ or were fired therefrom.

17 93. Defendants failed to pay these Class Members all wages due and certain at the time
18 of termination or within seventy-two (72) hours of resignation.

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

21 95. Defendants failed to pay Class Members without abatement, all wages as defined
22 by applicable California law. Specifically, Class Members were not paid all regular and overtime
23 wages because Defendants failed to pay for all hours worked, required off the clock work,
24 unlawfully rounded time entries to the detriment of Class Members, and failed to incorporate non-
25 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for
26 overtime, sick pay, and meal and rest break premiums. Additionally, Defendants failed to pay
27 premium wages owed for unprovided meal periods and rest periods, as further detailed in this
28 Complaint. Defendants' failure to pay said wages within the required time was willful within the

1 meaning of Labor Code § 203.

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

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

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

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

25 99. All wages due and owing to Plaintiff and the Class Members, including as required
26 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
27 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
28 payable to each Class Member in each pay period that he or she was not provided with a meal

1 period or rest period or paid straight or overtime wages or commissions to which he or she was
2 entitled.

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
19 **AND 1174.5**

20 **(Against All Defendants)**

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

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

27 104. During the course of Plaintiff’s and Class Members’ employment, Defendants
28 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as

1 required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper
2 wages, overtime, and premium pay as discussed above.

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

5 **NINTH CAUSE OF ACTION**

6 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

7 **(Against All Defendants)**

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

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

13 108. Defendants have regularly required Class Members to incur business expenses in the
14 course of performing their required job duties for Defendants including for cell phone expenses and
15 mileage costs. These expenses incurred by Class Members were necessary and required of them in
16 performing their assigned job duties, but Defendants failed to reimburse Class Members for all such
17 necessary expenditures. Class Members were not reimbursed for those lawful and necessary work
18 related expenses or losses incurred in direct discharge of their job duties during employment with
19 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
20 applicable IWC Wage Orders, paragraph 9.

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

24 **TENTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

16 113. On June 15, 2023, Plaintiff sent written requests through his counsel to Defendants
17 for their payroll records, timecards, and personnel records. However, Plaintiff did not receive the
18 records until July 11, 2023, twenty-six days after Plaintiff's request.

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

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

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

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

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

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

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

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

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

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

1 comply with minimum labor standards.

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

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

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

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

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

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

Defendants have unlawfully failed to pay.

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

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

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

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

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

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

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned

1 regular pay and minimum wages for regular hours worked and for failure to pay overtime
2 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
3 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
4 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
5 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
6 to Labor Code § 2699(g)(1);

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

15 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
16 provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to
17 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
18 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s)
19 seeking all civil and statutory penalties and wages available and applicable under Labor Code §§
20 226€, 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
21 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
22 providing inaccurate wage statements and failing to maintain records as required under Labor
23 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
24 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
25 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
26 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
27 citation, ..."

28 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at

1 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
2 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
3 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
4 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
5 § 2699(g)(1);

6 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
7 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
8 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
9 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
10 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
11 Labor Code § 2699(g)(1).

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

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

23 (b) If upon inspection or investigation the Labor Commissioner determines that a
24 person had paid or caused to be paid a wage for overtime work in violation of any
25 provision of this chapter, or any provision regulation hours and days of work in any order
26 of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The
27 procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
28 issued by the Labor Commissioner for a violation of this chapter shall be the same as those

1 set out in Section 1197.1.

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

4 135. Plaintiff has exhausted his administrative remedies by sending a certified letter to
5 the LWDA and Defendants postmarked on **February 23, 2024**, addressing in detail the specific
6 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
7 to support the alleged violations and requested penalties. The LWDA has not provided notice of
8 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
9 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
10 herein and in the PAGA Notice Letter and the original Complaint.

11 **RELIEF REQUESTED**

12 WHEREFORE, Plaintiff prays for the following relief:

- 13 1. For an order certifying this action as a class action;
- 14 2. For compensatory damages in the amount of the unpaid minimum wages for work
15 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
16 to the filing of this action, as may be proven;
- 17 3. For liquidated damages in the amount equal to the unpaid minimum wage and
18 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 19 4. For compensatory damages in the amount of all unpaid wages, including overtime
20 and double-time pay, as may be proven;
- 21 5. For compensatory damages in the amount of the hourly wage made by Class
22 Members for each missed or deficient meal period where no premium pay was paid therefor from
23 four (4) years prior to the filing of this action, as may be proven;
- 24 6. For compensatory damages in the amount of the hourly wage made by Class
25 Members for each day requisite rest breaks were not provided or were deficiently provided where
26 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
27 may be proven;
- 28 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be

1 proven;

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

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

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

8 11. For restitution for unfair competition pursuant to Business & Professions Code
9 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

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

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

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

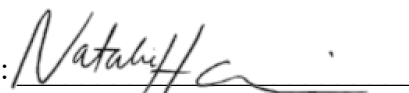
18 18. For an award providing for the payment of the costs of this suit;

19 19. For an award of attorneys' fees; and

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

21
22 DATED: April 29, 2024

D. LAW, INC.

23
24 By: 
25 David Yeremian
26 Natalie Haritounian
27 Matthew J. Carraher
28 Attorneys for Plaintiff RICHARD WEST and
all others similarly situated

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DATED: April 29, 2024

By: Natalie Harit
David Yeremian
Natalie Harit
Matthew J. Carraher
Attorneys for Plaintiff RICHARD WEST, and
all others similarly situated

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

Sherri F. McInnes (SBN 203996)
smcinnnes@employerlaw.com
 Jessica Crabbe (SBN 263668)
jcrabbe@employerlaw.com
 2601 Main Street, Suite 510
 Irvine, CA 92614

☐ **(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.

Katheryn Perez