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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

DAVID GIOVANNI CASTRO, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

KINGS OIL TOOLS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NUMBER: 24CV001679

CLASS ACTION COMPLAINT

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

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by David Giovanni Castro (“Plaintiff”),
2 individually and on behalf of all other hourly, non-exempt employees, relating to systemic violations
3 of California wage and hour laws by his former employer, Kings Oil Tools, Inc. (“Kings Oil” or
4 “Defendant”). Plaintiff makes the following allegations on information and belief, except as to
5 allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

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

9 2. Defendant maximized profits by cutting labor costs, grossly understaffing its worksites,
10 warehouses, yards, etc., and denying meal, recovery and rest breaks, systematically requiring off-the-
11 clock work (donning and doffing) and cheating their employees out of overtime wages and premium
12 payments.

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

18 4. Defendant also failed to provide for supplemental COVID-19 sick leave during the
19 pandemic, provide accurate wage statements which included the amount of supplemental COVID-19
20 hours available and taken, and failed to maintain records relating to the provision of supplemental
21 COVID-19 sick leave.

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

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

8. Defendant employed Plaintiff and other non-exempt, hourly employees within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other non-exempt, hourly employees.

9. Plaintiff is a citizen of the State of California performed work for Defendant in the City of San Ardo, a city located within the County of Monterey and other surrounding communities. During the relevant time period, Plaintiff was employed by Defendant as a Rig Hand, a non-exempt, hourly position.

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

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

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

1 employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-
2 Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
3 Defendants.

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

11 **CLASS ACTION ALLEGATIONS**

12 14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of himself
13 and the following Class (“Class members”):

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

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

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

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

24 B. This action involves common questions of law and fact to the proposed Class
25 because the action focuses on Defendant’s systematic course of illegal payroll practices and policies,
26 which was applied to all non-exempt employees in uniform violation of the California Labor Code,
27 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair
28

1 business practices arising from such violations. Here are a few common questions of law and fact
2 that will drive resolution of this action:

- 3 1. Whether Defendant failed to provide non-exempt employees with legally
4 compliant meal periods and rest breaks;
- 5 2. Whether Defendant failed to timely pay wages to non-exempt employees in
6 compliance with California law;
- 7 3. Whether Defendant failed to pay overtime to non-exempt employees in
8 compliance with California law;
- 9 4. Whether Defendant failed to maintain required records and accurate wage
10 statements for non-exempt employees;
- 11 5. Whether Defendant failed to pay non-exempt employees all wages due, for all
12 hours worked, including for off-the-clock work, travel time, pre and post-shift
13 work and COVID screening;
- 14 6. Whether Defendant failed to pay COVID-19 supplemental sick pay, include
15 the pertinent information relating to COVID-19 supplemental sick pay on wage
16 statements, and maintain records relating to the provision of COVID-19
17 supplemental sick pay;
- 18 7. Whether Defendant engaged in unfair and/or unlawful business practices.

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

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

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FIRST CAUSE OF ACTION

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

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

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

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

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

21. Defendant grossly understaffs its worksites or Plaintiff and the other Class members are so busy with their work, they are forced to missed their meal periods and managers and supervisors of Defendant manipulate the time records to make it appear as if Plaintiff and the other Class members are taking compliant meal periods. As a direct consequence of Defendant's action, understaffing, Plaintiff and the other Class members are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

22. Defendant failed to provide meal periods to Plaintiff and the other Class members when working shifts longer than twelve (12) hours or more. Among other things, Defendant

1 overworked Plaintiff and Class members and did not adequately provide them with their meal
 2 periods, and systematically denied them the opportunity to take meal periods, including second meal
 3 periods during shifts of ten (10) hours or longer.

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **Failure to Provide Required Rest Breaks**

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

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

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

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

26 28. As with meal periods, Defendant's policies and practices caused Plaintiff and Class
 27 members to miss or otherwise take non-compliant rest periods by, among other things, giving them
 28 unreasonable amounts of work that had to be completed within their shift such that rest periods

1 simply could not be taken. Plaintiff and other Class members were told to “man up, you do not need
 2 a break” as they had to first secure the permission from their supervisors before Plaintiff and the
 3 other Class members were authorized to take their rest periods. Further, as set forth above, Defendant
 4 required Plaintiff and the other Class members to perform so much work, this resulted in the inability
 5 of Plaintiff and Class members to miss their rest periods. In addition, Defendant systematically
 6 denied them the opportunity to take rest periods, including all rest periods required during long shifts,
 7 which at times exceeded twelve (12) consecutive hours.

8 29. Defendant further violated California Labor Code § 226.7, IWC Wage Order No.16-
 9 2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law, Cal.
 10 Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were not
 11 provided with a rest break, in accordance with the applicable wage order, one additional hour of
 12 compensation at the proper regular rate of pay for each workday that a rest break was not provided.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages**

18 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders and Applicable Sections]**

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

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

22 32. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders and
 23 applicable sections, Defendant are required to compensate Plaintiff and Class members for all
 24 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
 25 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
 26 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
 27 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
 28 consecutive day of work in any workweek.

1 33. Plaintiff and Class members are current and former direct and temporary hourly paid
2 employees entitled to the protections of California Labor Code §§ 510, 1194, and all applicable IWC
3 Wage Orders. During the statute of limitations period, Defendant failed to compensate Plaintiff and
4 Class members for all overtime hours worked as required under the foregoing provisions of the
5 California Labor Code and IWC Wage Order by, among other methods: failing to pay any overtime
6 compensation; requiring, permitting or suffering Plaintiff and Class members to work off-the-clock;
7 requiring, suffering, or permitting Plaintiff and Class members to work through meal and rest periods
8 but not compensating them for this time, failing to include this time in all hours worked; failing to
9 pay for travel time; failing to pay for training time; editing or otherwise manipulating the overtime
10 hours worked, failing to pay for pre-and post-shift work (including COVID screenings and donning
11 and doffing uniforms and safety equipment); and other methods to be discovered.

12 34. In a short-sighted attempt to maximize profits, Defendant fails to adequately staff its
13 projects. Not only has this practice resulted in widespread missed meal and rest breaks, but it has
14 also caused Plaintiff and Class members to perform significant amounts of work while off-the-clock.
15 Defendant is aware that Plaintiff and Class members perform this work off-the-clock work because
16 managers see them doing this work well before the beginning the start of their scheduled shifts.

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

22 36. In violation of California law, Defendant has knowingly and willfully refused to
23 perform its obligations to compensate Plaintiff and Class members for all wages earned and all hours
24 worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members have
25 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
26 lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant to fully
27 perform its obligations under state law, all to their respective damages in amounts according to proof
28 at time of trial, and within the jurisdiction of this Court.

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

FOURTH CAUSE OF ACTION

Failure to Pay Timely Wages

[Cal. Lab. Code §§ 204, 210]

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

38. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 37.

39. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code § 204 further provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

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

41. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other

1 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs,
2 expenses, and reasonable attorneys' fees.

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

7 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 41.

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

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

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

22 46. During the statute of limitations period, Defendant has willfully failed to pay accrued
23 wages and other compensation to Plaintiff and Class members in accordance with California Labor
24 Code §§ 201 and 202. Defendant does not have a sufficient policy to provide Plaintiff and Class
25 members with their final paychecks within the timeframes required under California law. In addition,
26 because Defendant has failed and continue to fail to properly compensate Plaintiff and Class
27 members for all hours worked when due, overtime wages, and compensation for non-compliant meal
28 and rest breaks, Defendant has also willfully failed and continues to fail to pay accrued wages and

1 other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201
2 and 202.

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

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

10 **SIXTH CAUSE OF ACTION**

11 **Failure to Furnish Accurate Itemized Wage Statements** 12 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable** 13 **IWC Wage Orders and Applicable Sections]** 14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 49. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 48.

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

23 51. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
24 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved employees,
25 and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendant's failure to
26 include required information related to COVID-19 supplemental sick pay. Further, Defendant was
27 and is not providing Plaintiff and other Class members with proper meal periods and rest breaks but
28 intentionally fails to include in their wage statements one (1) additional hour of compensation at their

1 regular rates of pay for each non-compliant meal period or rest break, and failing to pay all wages due
2 resulting in violations of Labor Code §226.

3 52. Defendant knowingly and intentionally failed to provide Plaintiff and Class members
4 with timely, accurate, and itemized wage statements in accordance with California Labor Code §
5 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were
6 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

7 53. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
8 Class members have been damaged in an amount according to proof at trial, and seek all wages
9 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
10 available penalties, including but not limited to penalties pursuant to California Labor Code §§
11 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including
12 but not limited to those provided in California Labor Code § 226(e), as well as other available
13 remedies.

14 **SEVENTH CAUSE OF ACTION**
15 **Failure to Maintain Required Records**
16 **[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders**
17 **and Applicable Sections]**
18 **(On Behalf of Plaintiff and the Class against all Defendants)**

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

21 55. During the statute of limitations period, as part of Defendant's illegal payroll policies
22 and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant
23 knowingly and intentionally failed to maintain records as required under California Labor Code §§
24 226, 1174, and all applicable IWC Wage Orders and applicable sections, including but not limited to,
25 the following records: total daily hours worked by each non-exempt employee; applicable rates of
26 pay; all deductions; meal periods; time records showing when each non-exempt employee begins and
27 ends each workday; and accurate itemized wage statements.

28 56. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
Class members have been damaged in an amount according to proof at trial, and are entitled to all

wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

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

57. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 56.

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

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

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

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

61. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 60.

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

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

64. Furthermore, Defendant knowingly and intentionally failed in its affirmative obligation to provide and pay COVID-19 Supplemental Sick Leave to Class Members in violation of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1 requires employers to provide up to 80 hours of COVID19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 required employers to provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended COVID sick leave protections and requires employers to provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. 85. Under Labor Code section 248.1, employees must be paid for COVID-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

65. Pursuant to Labor Code section 248.2, non-exempt employees must be paid COVID-19 supplemental paid sick leave according to the highest of the following four methods: (1) the

regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or (4) the local minimum wage.

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

67. Defendant failed to provide and pay COVID-19 supplemental paid sick leave in the and maintain records pursuant to Labor Code Section 247.5 in the manner as provided by Labor Code Sections 248.2 and 248.6, and Defendant failed to pay Plaintiff and the Class Members such sick leave at one of the rates authorized by statute.

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

TENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

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

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

69. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 68.

70. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements, failure to maintain required records, and failure to maintain records relating to and the provision of supplemental COVID-19 sick leave, all constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

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

1 72. Among other practices, Defendant has avoided payment of wages, overtime wages, the
2 provision of meal and rest breaks, and other benefits as required by the California Labor Code, the
3 California Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed
4 to record, report, and pay the correct sums of assessment to the state authorities under the California
5 Labor Code and other applicable regulations.

6 73. As a result of these unfair and unlawful business practices, Defendant has reaped
7 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and
8 members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them
9 to Plaintiff and Class members.

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

15 **ELEVENTH CAUSE OF ACTION**
16 **Representative Action for Civil Penalties**
17 **[Cal. Lab. Code §§ 2698- 2699.5]**

18 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

19 75. Plaintiff incorporates herein by specific reference as though fully set forth the
20 allegations in paragraphs 1 through 74, with exception of the allegations in Paragraphs 14 through 16
(A)-(D).

21 76. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
22 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
23 direct and temporary, hourly-paid employees working or placed on assignment at a facility of
24 Defendant DCG in the State of California at any time within the period beginning one (1) year prior
25 and sixty-five (65) days prior to the February 16, 2024 notice Plaintiff provided to the LWDA and
26 Defendant, and ending at the time this action proceeds to final judgment ("statute of limitations
27 period").
28

1 77. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
2 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current
3 and former nonexempt, hourly employees who worked for Defendant in the State of California
4 pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was
5 employed by Defendant and the alleged violations of the California Labor Code were committed
6 against Plaintiff.

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

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

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

27 81. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
28 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties

under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.7, 218.6, 226, 226.7, 246, 247.5, 248.1, 248.6, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 1199, and 2802. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

82. Pursuant to California Labor Code §§ 2699.3, on February 16, 2024, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

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

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 16-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and from engaging in the unlawful business practices complained of herein;
5. For waiting time penalties pursuant to California Labor Code § 203;

6. For statutory penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5, 1775, 1197.1, 2699.3;

7. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

8. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226, 2802, 2699.3, et seq. and California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing for attorneys' fees and costs;

10. For declaratory relief;

11. For an order requiring and certifying the First through Tenth Causes of Action as a class action;

12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel; and

13. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

DATED: April 23, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By. 

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

Attorney for Plaintiff and all others similarly situated