

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/23/2024 at 12:17:00 PM
Clerk of the Superior Court
By Isaiah Irizarry, Deputy Clerk

Attorneys for Plaintiff ALBERTO MICHEL GALINDO, on behalf
of himself and others similarly situated

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

ALBERTO MICHEL GALINDO, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

SPECIALIZED EDUCATION SERVICES,
INC., a Delaware Business Corporation;
SPECIALIZED EDUCATION OF
CALIFORNIA, a California Stock
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2024-00012937-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:
Hon. Marcella O. McLaughlin
Dept.: C-72

**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 Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: March 19, 2024
Trial Date: None Set

1 Plaintiff ALBERTO MICHEL GALINDO (hereinafter “Plaintiff”), on behalf of himself
2 and other similarly situated non-exempt, hourly employees employed by Defendants within the
3 state of California during the relevant time period (collectively, “Employees”; individually,
4 “Employee”), complains of Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees, including those employed as
9 maintenance engineers, stationaries, gardeners, maintenance persons, janitors, and those in similar
10 and related positions, by Defendants SPECIALIZED EDUCATION SERVICES, INC, a Delaware
11 Business corporation; SPECIALIZED EDUCATION OF CALIFORNIA, INC, a California stock
12 corporation; and DOES 1 through 50, inclusive (all defendants being collectively referred to
13 herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
14 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
15 (“IWC”), and the California Business & Professions Code, and seeks redress for these violations.

16 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
17 Defendants in positions generally pertaining to cleaning and maintaining school properties and
18 educational facilities. Plaintiff, and upon information and belief the other similarly situated
19 Employees in the Class, were required to perform work tasks based out of Defendants’ school
20 facilities in California. Plaintiff was employed by Defendants as a property maintenance manager,
21 and Defendants tasked him with duties that included assisting with sweeping, scrubbing, and
22 cleaning the school property, and maintaining the physical property by sweeping and blowing
23 walkways, watering the lawn and outdoor areas, checking and maintaining equipment, tools, and
24 machinery, and locking and unlocking gates and doors.

25 3. Defendants employed other similarly situated Employees in similar and related
26 positions based out of Defendants’ schools throughout California, including upon information and
27 belief in the cities of Alhambra, Antioch, Colton, Fairfield, Santa Rosa, Sacramento, Stockton, and
28 San Diego. Plaintiff and the other similarly situated Class Members worked at Defendants’ behest

1 without being paid all wages due and without being provided all required breaks. More
2 specifically, Plaintiff and the other similarly situated Class Members were employed by
3 Defendants and shared similar job duties and responsibilities, were subjected to the same policies
4 and practices, and endured similar violations at Defendants' hands.

5 4. Defendants required Plaintiff and the Employees in the Class to work off the clock
6 and failed to accurately record the hours they were on the clock, failed to pay them at the
7 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
8 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
9 statements that prevented them from learning of these unlawful pay practices. Defendants also
10 failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were
11 required to remain under Defendants' control and were not provided with the opportunity to take
12 full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and
13 the applicable paragraphs of the IWC Wage Orders.

14 5. Defendant SPECIALIZED EDUCATION SERVICES, INC. is a Delaware
15 business corporation that is not registered with the California Secretary of State. It lists officers
16 with an address in Yardley, Pennsylvania with the Pennsylvania Department of State website.
17 Upon information and belief, Specialized Education Services, Inc. owns and operates various
18 schools and educational facilities throughout California, including in San Diego where Plaintiff
19 worked. Specialized Education Services, Inc.'s website explains that: "At the Sierra Schools
20 across California, our certified teachers and staff provide individualized academic and behavioral
21 interventions for students who have not found success in the traditional classroom due to a variety
22 of intensive special needs, behavioral issues, or coexisting disabilities." Additionally, the wage
23 statements issued to Plaintiff list Specialized Education Services, Inc. as his employer with an
24 address in Philadelphia, Pennsylvania.

25 6. Upon information and belief, Specialized Education Services, Inc. operates with or
26 does business as SPECIALIZED EDUCATION OF CALIFORNIA, INC, a California stock
27 corporation. Like Specialized Education Services, Inc., it too lists a principal address in
28 Philadelphia, Pennsylvania. It does not list a California Office address, but Specialized Education

1 of California, Inc. lists its type of business as “education services” and lists registered agents with
2 an address in Glendale, California with the California Secretary of State.

3 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
5 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
6 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
7 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
8 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Diego County
9 and Defendants have not listed a principal California address. Defendants also employ Class
10 Members at its schools in San Diego County and throughout California.

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

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

1 and each of them, employed or jointly employed the Employee Class Members.

2 **FACTUAL BACKGROUND**

3 10. The Employees who comprise the Class, including Plaintiff, are non-exempt
4 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
5 (“IWC”). During the period of four years prior to the filing of this action through its resolution,
6 the Employee Class Members were employed by Defendants and worked in non-exempt
7 positions at the direction of Defendants in the State of California. Plaintiff and the Class
8 Members were either not paid by Defendants for all hours worked or were not paid at the
9 appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to
10 pay Plaintiff and the Class Members all wages due and owing, including compensation for off-
11 the-clock work, uncompliant meal and rest breaks, and Defendants’ failure to furnish accurate
12 wage statements, all in violation of various provisions of the California Labor Code and
13 applicable paragraphs of the IWC Wage Orders.

14 11. During the course of Plaintiff and the Class Members’ employment with
15 Defendants, they were not paid all wages they were owed, including for all work performed
16 (resulting in “off the clock” work) and for all their overtime hours worked, and they were not
17 paid at the required rates for overtime. This has resulted in systematic and ongoing violations of
18 the California Labor Code and relevant IWC Wage Orders. Upon information and belief,
19 Defendants employ other non-exempt, hourly employees as maintenance engineers, stationaries,
20 gardeners, maintenance persons, janitors, and in similar and related positions based out of their
21 schools in California.

22 12. Plaintiff was scheduled to work Monday through Friday for seven hours per shift,
23 with shift times generally spanning from 7:00 a.m. through 2:30 p.m. On many occasions,
24 Plaintiff was also required to work longer shifts with an additional hour or two of time if it was
25 approved by Defendants to be paid at overtime premium rates. However, Plaintiff was required
26 by Defendants to endure substantial off-the-clock work before and after his scheduled shift hours
27 and over the weekends.

1 13. Defendants' policy and practice of requiring systematic off-the-clock work flowed
2 in part from their unlawful timekeeping procedures. Defendants required timekeeping entries to
3 be inputted into the company computer systems by Employees. While Defendants required time
4 punch records for shift start and end times and meal period beginning and end times, they were
5 not recorded contemporaneously with Plaintiff's actual hours worked.

6 14. Additionally, Defendants instructed Plaintiff and the Class Members to input into
7 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth
8 hour of work as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff
9 and the Class Members to thus record compliant meal breaks without regard to whether they were
10 actually taken on time or for the full duration or were interrupted management demands and other
11 work requirements. Plaintiff thus regularly clocked in before the fifth hour of work as instructed
12 by Defendants, despite generally taking his meal period after the fifth hour of work. Additionally,
13 by deducting 30 minutes for a meal period that was generally not lawfully provided if at all,
14 Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each
15 Employee's daily work shifts.

16 15. Defendants also required Plaintiff to be prepared to begin work at his scheduled
17 shift start time, and he would be reprimanded if he was not. However, for Plaintiff to do so he had
18 to arrive at the school well before that start time. Plaintiff's work shifts generally were scheduled
19 to start at 7:00 a.m., and to be prepared to start working then he had to arrive by at least 10-20
20 minutes prior so he could turn on the sprinklers before the children arrived at the school.
21 Defendants managers were aware that Plaintiff began working before his scheduled start time,
22 and despite their knowledge required him to clock in at his scheduled shift time.

23 16. Defendants' managers also required Plaintiff to do work over the weekend and
24 failed to compensate Plaintiff for these off-the-clock hours. Plaintiff estimates that about two
25 times per month, Plaintiff was called into the school during the weekend for emergencies relating
26 to maintenance and security. Plaintiff estimates that these emergencies on average took about an
27 hour and a half to address and resolve. Such hours were not recorded, and Defendants failed to
28 compensate Plaintiff for these hours worked.

1 17. Additionally, Defendants' managers contacted Plaintiff by calling his personal cell
2 phone regarding work-related matters and scheduling and would do so both throughout the work
3 day, during breaks, and after work hours. Plaintiff was also required to work off the clock after
4 his scheduled shift end times, and he also was compelled by Defendants not to record that he was
5 clocked out but to continue working. Oftentimes, Plaintiff generally clocked out and would then
6 take out trash bags or continue cleaning. Additional off-the-clock work occurred in the form of
7 the unlawful deduction of 30 minutes of hours worked for a meal period that was provided
8 generally untimely if at all.

9 18. Defendant's managers also required Plaintiff to watch training videos but failed to
10 compensate him for these hours worked. Defendants required Plaintiff to watch training videos
11 before a set deadline without allocating any scheduled work time for this task, and for Plaintiff to
12 meet these deadlines, he was compelled to watch the required training videos during his meal
13 breaks and after work hours. Plaintiff estimates that he was required to do about 5-6 trainings per
14 year. Defendants also required Plaintiff to read the company policies outside of scheduled work
15 hours, and Defendants again failed to pay Plaintiff wages for this time.

16 19. Overtime hours were generally not allowed, and, Defendants instructed Plaintiff to
17 merely record his scheduled hours, rather than his actual hours worked. Additionally, to whatever
18 extent Defendants paid bonuses and any other form of remuneration to Employees in the Class,
19 such as shift differentials and the like, Defendants failed to include it in the regular rate used to
20 calculate and pay the overtime that Defendants did pay.

21 20. Plaintiff was therefore not paid for all his hours worked at the required minimum,
22 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
23 and practice of requiring him to work off the clock and without pay. Defendants systematically
24 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
25 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
26 day at the required double time rate. Upon information and belief, the Class Members were bound
27 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
28 hands as Plaintiff.

1 21. Defendants have either failed to maintain timekeeping records for Plaintiff that
2 would permit Plaintiff to discover the nature and extent of the off-the-clock work Defendants
3 required and the actual hours Plaintiff worked or the breaks he received. By failing to pay for all
4 hours worked, and by under-recording regular hours to the detriment of the Class Members,
5 Defendants have committed knowing and intentional ongoing violations of the record-keeping
6 requirements under the Labor Code, including section 1174, by either failing to maintain records
7 or retaining inaccurate ones.

8 22. The failure to pay for all hours worked and underpayment of wages to Plaintiff
9 and the Class Members is and has been a direct consequence of Defendants' unlawful
10 compensation policies and practices, which upon information and belief applied uniformly to the
11 Class Members based out of Defendants' educational facilities throughout California. As a result
12 of the above-described unlawful requirements to work off the clock, the failure to accurately
13 record all hours worked and pay wages at the correct rates, and the other wage violations they
14 endured at Defendants' hands, Plaintiff and the Class Members were not properly paid all wages
15 earned and all wages owed to them by Defendants, including when working more than eight
16 hours in any given day and/or more than forty hours in any given week.

17 23. Therefore, from at least four years prior to the filing of this lawsuit and continuing
18 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
19 hours worked and failing to pay minimum wages for all time worked, as required by California
20 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
21 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
22 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
23 week and double-time rates for all hours worked in excess of twelve hours a day, in violation of
24 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

25 24. Defendants also failed to provide Plaintiff and the Class Members with their
26 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
27 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to
28 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class

1 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).

2 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
3 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
4 IWC Wage Order(s).

5 25. More specifically, Plaintiff worked shifts that entitled him to at least one meal
6 period, but as addressed above, Defendants' managers required Plaintiff and the Class Members to
7 input thirty minutes lunches and would deduct that time from hours worked for the shift. To
8 whatever extent there was ever a schedule for meal periods, it went by the wayside quickly as
9 there always seemed to be an issue to resolve or a walkie talkie dispatch to respond to. For
10 instance, Plaintiff frequently had to cut his break short whenever a delivery truck arrived during
11 his break. On such occasions, Defendants dispatched Plaintiff and asked him to cut his meal
12 period short to help assist with unloading the delivery. This led to systematically late meal periods,
13 if they were provided at all, and on-duty meal periods that were incessantly interrupted by
14 management demands and required job duties and tasks to be performed and required Employees
15 to remain under Defendants' control during breaks. Plaintiff estimates that his meal periods were
16 interrupted approximately two times per week with dispatches from the walkie-talkie.

17 26. Additionally, Defendants instructed Plaintiff and the Class Members to input into
18 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth
19 hour of work as required under the Labor Code and Wage Orders. As a result, Plaintiff would
20 clock out before the fifth hour before every shift but would continue working, and would generally
21 take a break after the fifth hour of work when his workload permitted. Defendants instructed
22 Plaintiff and the Class Members to thus record compliant meal breaks without regard to whether
23 they were actually taken on time or for the full duration or were interrupted by demands from
24 management and other work requirements. Plaintiff recalls that he was rarely ever able to take a
25 full thirty minutes of actual duty-free break time despite the fact that Defendants deducted a meal
26 period on each work shift without regard to whether it was actually taken or was otherwise
27 unlawful.

28

1 27. Therefore, meal period violations systematically occurred ongoing throughout all
2 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
3 payments and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
4 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
5 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
6 premium payment. Upon information and belief, the other Class Members were subjected to
7 similar unlawful policies and practices and endured similar violations as Plaintiff.

8 28. Defendants thus failed to provide all the legally required unpaid, off-duty meal
9 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
10 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
11 Members were required to perform work as ordered by Defendants for more than five hours
12 during a shift without receiving compliant meal periods. Additionally, as addressed above,
13 Defendants followed a practice of requiring off-the-clock work in a manner that would impact
14 when Employees were to receive meal periods and rest breaks and required them to respond to
15 work calls and inquiries and other demands during breaks, thus leading to further violations.

16 29. Upon information and belief, Defendants' systems did not automatically generate a
17 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
18 into a work shift or in the event the time punch records reflected a meal period of less than thirty
19 minutes. However, upon information and belief, in the event Defendants did pay any meal period
20 premiums, they did so at the employee's customary regular rate of hourly compensation without
21 including all forms of remuneration in that hourly rate calculation, for example by omitting
22 performance-based bonuses and the like from the rate at which meal premiums were paid.

23 30. Defendants thus followed uniformly applied policies of not providing all required
24 meal periods to their Employees. Meal periods were often not properly provided, as work
25 demands and walkie talkie dispatches shortened their breaks. Even when Plaintiff and the Class
26 Members were able to take a meal period, it was generally interrupted by work duties or was taken
27 after the fifth hour of work. Additionally, as addressed above, Defendants followed a practice of
28 requiring off the clock work in a manner that would impact when Employees were to receive meal

1 periods and rest breaks, thus leading to further violations.

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

8 32. Therefore, for at least four years prior to the filing of this action and through to the
9 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
10 not provided with the opportunity to take required breaks as required under the Labor Code and
11 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
12 Class Members were provided with a meal period, it was often untimely or interrupted, or was
13 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.
14 Meal period violations thus occurred in one or more of the following manners:

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

1 33. Similar violations resulted from Defendants' failure to authorize and permit
2 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
3 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members
4 were either not authorized permitted the opportunity to take a rest break, or were required to
5 remain under Defendants' control and respond to calls and instructions from management and job
6 demands if and when they even attempted to take one. Upon information and belief, Defendants
7 thus also failed to authorize and permit employees to leave the premises during rest breaks,
8 evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members to
9 remain under their control during required off-duty rest break times.

10 34. Rest breaks were neither scheduled nor contemplated by Defendants. During
11 Plaintiff's entire employment duration with Defendants, he cannot recall a time when he took a
12 break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten
13 minute rest breaks during each of his work shifts. As detailed above, in addition to failing to
14 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal
15 periods that were rarely provided or otherwise received without violation.

16 35. Defendants' uniformly applied policies and practices thus resulted in untimely and
17 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
18 Members worked shifts of at least eight hours, which required at least two rest breaks, and often
19 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
20 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
21 permitted to take a second or a third break, and those that were provided were often late and
22 generally interrupted by job duties and requirement.

23 36. During rest periods, employers must relieve employees of all duties and relinquish
24 control over how employees spend their time. Plaintiff and the Class Members were and are
25 under Defendants' control when they are working through rest breaks and remaining under
26 Defendants' control. Defendants have also provided either impermissibly shortened or untimely
27 meal and rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class
28 were thus not authorized and permitted to take lawful rest periods, were systematically required

1 by Defendants to work through or during breaks, and were not provided with one hour's wages in
2 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks or
3 oftentimes was asked to return to the school to assist with a task, thus making them either
4 untimely or shortened and on-duty, and they were also prevented from leaving the premises and
5 otherwise remain under Defendants' control during rest breaks under Defendants' uniformly
6 applied policies and practices. Rest period violations therefore arose in one or more of the
7 following manners:

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

16 37. From at least four years prior to the filing of this lawsuit and continuing to the
17 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
18 deducting the Employees' earned wages, including by the above-described off-the-clock work and
19 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
20 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely
21 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
22 that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted
23 at least 30 minutes of hours worked from each Employee's daily work shifts. By not compensating
24 Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of
25 Labor Code § 221.

26 38. Defendants also violated California Labor Code § 246 by not providing all
27 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an
28 Employee who "works in California for the same employer for 30 or more days within a year

1 from the commencement of employment is entitled to paid sick days as specified in this section.”
2 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
3 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
4 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
5 the Class Members during the relevant time period, including by failing to provide two work
6 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
7 248.2 and including damages and penalties as these sections are enforced through Labor Code §
8 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
9 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
10 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
11 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seeks this relief
12 available for Defendants’ failure to provide Employees with all their required and earned sick
13 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
14 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
15 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
16 and costs pursuant to Labor Code § 2699(g)(1).

17 39. Upon information and belief, Defendants also failed to provide Employees such as
18 Plaintiff at the time of his employment and thereafter with written notice complying with all the
19 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
20 shall provide to each employee a written notice, in the language the employer normally uses to
21 communicate employment-related information to the employee, containing” specific required
22 information. Upon information and belief, Defendants failed to provide this information to the
23 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
24 provide Plaintiff and the aggrieved employee Class Members certain specific information upon
25 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
26 any such information when he was hired, or have failed to produce them, and upon information
27 and belief Defendants committed similar violations in connection with similarly situated and
28 aggrieved Class Members.

1 40. As a result of these illegal policies and practices, Defendants also engaged in and
2 enforced the following additional unlawful practices and policies against Plaintiff and the Class
3 Members he seeks to represent:

- 4 a. failing to pay all wages owed to Class Members who either were discharged, laid
5 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
6 203;
- 7 b. failing to pay all wages owed to the Class Members twice monthly in accordance
8 with the requirements of Labor Code § 204;
- 9 c. failing to pay Class Members all wages owed, including all meal and rest period
10 premium wages, and failing to pay them at the regular rate of compensation; and
- 11 d. failing to maintain accurate records of Class Members' hours worked and earned
12 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
13 7 of the applicable IWC Wage Orders.

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

1 failed to accurately record and pay for all regular and overtime hours worked and submitted by
2 Plaintiff and the Class Members, including by failing to pay all overtime hours at the correctly
3 calculated overtime premium rate.

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

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

23 44. Additionally, from at least four years prior to the filing of this lawsuit and
24 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
25 incur necessary business expenses in the course of performing their required job duties without
26 reimbursement. This includes reimbursement for rainboots that Plaintiff purchased to perform his
27 required job responsibilities. Plaintiff and the Class Members must be reimbursed for these
28 necessary business expenses under Labor Code § 2802 and Defendants failed to do so.

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

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

CLASS ALLEGATIONS

47. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often referred to as “the Class” or “Class Members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by Defendants within the State of California.” This includes all types of maintenance engineers, stationaries, gardeners, maintenance persons, and janitors, and those in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

7 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class Members
8 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
9 including by requiring off the clock work.

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

13 h. Subclass 8. Termination Pay Subclass. All Class Members who, within the
14 applicable limitations period, either voluntarily or involuntarily separated from their employment
15 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
16 termination.

17 i. Subclass 9. Payroll Records Subclass. All Class Members who were subject to
18 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
19 by California wage-and-hour laws.

20 j. Subclass 10. Expense Reimbursement Subclass. All Class Members who were
21 subject to Defendants' policy and/or practice of failing to reimburse necessary business expenses.

22 k. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a
23 result of Defendants' business acts and practices, to the extent such acts and practices are found to
24 be unlawful, deceptive, and/or unfair.

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

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

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

15 **A. Numerosity**

16 51. The potential members of the class as defined are so numerous that joinder of all
17 the member of the class is impracticable. While the precise number of Class Member has not been
18 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
19 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
20 the Class definition within the State of California. Plaintiff alleges that Defendants’ employment
21 records will provide information as to the number and location of all Class Members.

22 **B. Commonality**

23 52. There are questions of law and fact common to the Class that predominate over any
24 questions affecting only individual Class Members. The common questions are numerous and
25 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
26 Labor Code addressed above. As such, these common questions predominate over individual
27 questions concerning each individual Class Member’s showing as to his or her eligibility for
28 recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees 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 Employees 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 Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. 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;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

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

3 **C. Typicality**

4 53. The claims of the named plaintiff are typical of those of the other Employees. The
5 Employee Class Members all sustained injuries and damages arising out of and caused by
6 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
7 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
8 the off the clock work and meal and rest violations he was required to endure are typical of those
9 of the other Class Members.

10 **D. Adequacy of Representation**

11 54. Plaintiff will fairly and adequately represent and protect the interest of the
12 Employee Class Members. Counsel who represents Plaintiff and the Employees in the Class are
13 experienced and competent in litigating employment class actions.

14 **E. Superiority of Class Action**

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

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

1 to vindicate their rights for violations they endured which they would otherwise be foreclosed
2 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Against All Defendants)**

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

1 61. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
3 would work hours and not receive wages, including as alleged above in connection with off-the-
4 clock work, including all the time required to remain on duty and under Defendants' control
5 during breaks and due to the work demands placed upon them by Defendants' management and
6 by the unlawful deduction of hours or by paying what should have been overtime hours as
7 regular hours. Defendants' uniformly applied policies required systematic off-the-clock work and
8 underpayment of all wages owed to Employees over a period of time, while benefiting
9 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
10 wages to Plaintiff and the Class Members, including by requiring systematic off-the-clock work.
11 To the extent any local wage ordinances were also applicable to paying the employees an hourly
12 rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances.
13 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
14 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
15 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
16 wage pay.

17 62. In California, employees must be paid at least the applicable state minimum wage
18 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
19 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
20 California Labor Code § 204, other applicable laws and regulations, and public policy, an
21 employer must timely pay its employees for all hours worked. Defendants failed to do so.

22 63. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
23 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
24 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
25 applicable minimum wage rate fixed by the commission for work during the relevant period is
26 found in the Wage Orders.

27 64. The minimum wage provisions of California Labor Code are enforceable by private
28 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to

1 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
2 overtime compensation applicable to the employee is entitled to recover in a civil action the
3 unpaid balance of the full amount of this minimum wage or overtime compensation, including
4 interest thereon, reasonable attorney's fees and costs of suit."

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

11 66. In committing these violations of the California Labor Code, Defendants
12 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
13 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
14 time worked by Plaintiff and other members of the Class, including by requiring off the clock
15 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
16 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
17 Welfare Commission requirements and other applicable laws and regulations. As a result of these
18 violations, Defendants also failed to timely pay all wages earned in accordance with California
19 Labor Code § 1194.

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

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

28

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

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

71. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages (including double minimum wages) and local wage ordinance wages and liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the Class Members who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class Members are entitled to seek and recover statutory costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

73. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
2 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
3 may be maintained directly against the employer in an employee's name without first filing a
4 claim with the Division of Labor Standards and Enforcement.

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

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

19 76. Defendants thus had a consistent policy of not paying Employees wages for all
20 hours worked, including hours at their required regular, overtime, and double-time rates.
21 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
22 and/or, modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
23 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
24 the Class Members all earned and owed straight time and overtime wages and other benefits, in
25 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
26 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
27 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
28 employees to work through meal periods or remain under Defendants' control when they were

1 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
2 respond to demands from managers.

3 77. Therefore, Employees were not properly compensated, nor were they paid overtime
4 rates for hours worked in excess of eight hours in a given day and/or forty hours in a given week.
5 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
6 Class Members to work through meal periods when they were required to be clocked out or to
7 otherwise work off the clock to complete their daily job duties.

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

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

26 80. Defendants' failure to pay compensation in a timely fashion also constituted a
27 violation of California Labor Code § 204, which requires that all wages shall be paid
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Employees. Each such failure to make a timely payment of
3 compensation to Employees constitutes a separate violation of California Labor Code § 204.

4 81. Employees have been damaged by these violations of California Labor Code §§
5 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
6 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
7 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
8 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
9 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
10 any order or ruling of the commission.”

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

18 **THIRD CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

1 85. Defendants failed to provide Employees with meal periods as required under the
2 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
3 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
4 provided them after Employees worked beyond the fifth hour of their shifts or Employees
5 otherwise had them shortened and interrupted by work demands and requirements to perform off
6 the clock work and remain under Defendants' control. Defendants also unlawfully combined meal
7 periods with rest breaks. Furthermore, upon information and belief, on the occasions when
8 Employees worked more than ten hours in a given shift, they did so without receiving a second
9 uninterrupted thirty-minute meal period as required by law.

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

14 87. Moreover, Defendants failed to compensate Employees for each meal period not
15 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
16 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
17 employee a meal period in accordance with this section, the employer shall pay the employee one
18 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
19 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
20 period premiums, they upon information and belief underpaid them by miscalculating the regular
21 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
22 compensate the Employees in the Class for each meal period not provided or inadequately
23 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
24 Wage Order.

25 88. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
26 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
27 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
28 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory

penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

91. Employees consistently worked consecutive four-hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest breaks. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, including by responding to work requirements, and had breaks provided untimely as a result of the above described off-the-clock work. Plaintiff and the Class Members were also not permitted to leave their work premises during rest breaks.

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

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

1 94. Defendants failed to authorize and permit Plaintiff and the Class Members to take
2 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
3 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
4 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
5 12 and 20 of the applicable IWC Wage Orders.

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

11 **FIFTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 226(a)**
13 **(Against All Defendants)**

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

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

23 98. Particularly, Defendants provided Plaintiff with paystubs that listed "FullBloom" as
24 his employer, a company that was not registered with the California Secretary of State. The
25 paystubs issued to Plaintiff also listed "Specialized Education of California" as his joint employer,
26 but again the name on the paystub failed to match any company name listed with the California
27 Secretary of State.

28

1 99. Defendants failed to provide Plaintiff and the similarly situated Employee Class
2 Members with accurate itemized wage statements in writing, as required by the Labor Code and
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
5 including for all overtime and double time hours worked and for deficient meal periods and rest
6 breaks, all of which Defendants knew or reasonably should have known were owed to the
7 Employees, as alleged above.

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

20 101. Plaintiff and the Class Members suffered injury as a result of Defendants'
21 knowing and intentional failure to provide them with the wage and hour statements as required by
22 law and are presumed to have suffered injury and entitled to penalties under Labor Code §
23 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide
24 accurate and complete information as required by any one or more of items Labor Code § 226
25 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily
26 determine from the wage statement alone one or more of the following: (i) The amount of the
27 gross wages or net wages paid to the employee during the pay period or any of the other
28 information required to be provided on the itemized wage statement pursuant to items (2) to (4),

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

8 102. Particularly, Defendants provided Plaintiff with paystubs that listed “FullBloom” as
9 his employer, a company that was not registered with the California Secretary of State. The
10 paystubs issued to Plaintiff also listed “Specialized Education of California” as his joint employer,
11 but again the name on the paystub failed to match any company name listed with the California
12 Secretary of State.

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

21 104. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
22 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
23 Class suffered injuries, including among other things confusion over whether they received all
24 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
25 them to make mathematical computations to analyze whether the wages paid in fact compensated
26 them correctly for all hours worked.

27 105. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
28 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of

1 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
2 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
3 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
4 an award of costs and reasonable attorneys' fees.

5 **SIXTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 221**
7 **(Against All Defendants)**

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

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

15 108. Defendants unlawfully received and/or collected wages from the Employees in the
16 Class by requiring off-the-clock work, by miscalculating overtime, and by automatically deducting
17 time for meal periods when they were not lawfully provided and not paying one hour of pay at the
18 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the
19 other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks,
20 Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or
21 otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was
22 generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least
23 30 minutes of hours worked from each Employee's daily work shifts. By not compensating
24 Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of
25 Labor Code § 221.

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

28

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

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

111. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period.

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

113. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in

1 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful." Plaintiff and the Class Members may therefore pursue damages and penalties for
4 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
5 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

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

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

16 116. Plaintiff and numerous Class Members are no longer employed by Defendants;
17 they either quit Defendants' employ or were fired therefrom.

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

20 118. The wages withheld from these Employees by Defendants remained due and owing
21 for more than thirty days from the date of separation from employment. Additionally, Defendants
22 failed to pay Plaintiff his final check at the time of his termination.

23 119. Defendants thus failed to pay Plaintiff and the Class Members without abatement,
24 all wages as defined by applicable California law. Among other things, these Employees were not
25 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
26 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
27 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
28 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the

1 required time was willful within the meaning of Labor Code § 203.

2 120. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
3 are required “to pay each employee, on the established payday for the period involved, not less
4 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
5 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
6 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class Members
7 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
8 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
9 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
10 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
11 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
12 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
13 “violates...any provision of this chapter or any order or ruling of the commission.”

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

18 **NINTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

23 123. 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.

27 124. During the course of Plaintiff’s and Employees’ 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 them proper wages, overtime, and
2 premium pay as discussed above and failing to document and pay for actual hours worked.

3 125. Defendants are also required by the California Labor Code § 1198 and the
4 applicable Wage Order to maintain a tracking system that accurately records the times during
5 which Employees work.

6 126. Defendants have maintained a common unlawful policy and practice of failing to
7 accurately record all hours worked and all meal period start and end times and by adjusting or
8 otherwise rounding and shaving them down.

9 127. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
10 knew wages to be due but failed to pay them.

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

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

15 **(Against All Defendants)**

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

18 130. Plaintiff is informed and believes and based thereon alleges that throughout the
19 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-
20 related expenses such as rain boots. Plaintiff and the Class Members must be reimbursed for these
21 necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do
22 so.

23 131. Defendants thus followed a uniform policy and practice of failing to reimburse
24 Employees for these necessary work-related expenses or losses incurred in direct discharge of
25 their job duties during employment with Defendants and at the direction of the Defendants
26 pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

27 132. Defendants' knowing and willful failure to reimburse lawful necessary work-
28 related expenses and losses to Plaintiff and the Class Members resulted in damages because,

1 among other things, Defendants did not inform employees of their right to be reimbursed for those
2 work-related expenses. As Defendants failed to inform and misled Plaintiff and the Class
3 Members with regard to their rights, Plaintiff and the Class Members were led to believe that
4 incurring those lawful and necessary expenses was an expected and essential function of their
5 employment with Defendants and that failure to incur those expenses would have adverse
6 consequences on their employment.

7 133. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any
8 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
9 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
10 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
11 from the date Plaintiff and the Class Members incurred those expenses. Further, Plaintiff and the
12 Class Members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

13 **ELEVENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

15 **(Against All Defendants)**

16 134. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
17 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
18 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
19 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
20 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
21 the public interest within the meaning of Code of Civil Procedure § 1021.5.

22 135. Plaintiff is a "person" within the meaning of Business & Professions Code
23 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
24 injunctive relief, restitution, and other appropriate equitable relief.

25 136. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
26 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
27 fraudulent in that Defendants' policy and practice failed to provide the required amount of
28 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and

1 Class Members for all hours worked, due to systematic business practices as alleged herein that
2 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
3 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
4 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
5 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

25 141. By the conduct alleged herein, Defendants have engaged and continue to engage in
26 a business practice which violates California and federal law, including but not limited to, the
27 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
28 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this

1 Court should issue declaratory and other equitable relief pursuant to California Business &
2 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

13 **TWELFTH CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

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

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

147. 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, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

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

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

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,

1 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
3 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
4 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
5 providing inaccurate wage statements and failing to maintain records as required under Labor
6 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
7 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
8 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
9 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
10 citation, ...";

11 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
12 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
13 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
14 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
15 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
16 § 2699(g)(1);

17 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
18 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
19 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
20 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
21 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
22 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
23 pursuant to Labor Code § 2699(g)(1);

24 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code
25 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
26 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
27 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
28 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to

1 Labor Code § 2699(g)(1).

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

4 (a) Any employer or other person acting on behalf of an employer who violates, or
5 causes to be violated, a section of this chapter or any provision regulating hours and days of work
6 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
7 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
8 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
9 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
10 each pay period for which the employee was underpaid in addition to an amount sufficient to
11 recover underpaid wages...
12

13 (b) If upon inspection or investigation the Labor Commissioner determines that a
14 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
15 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
17 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
18 violation of this chapter shall be the same as those set out in Section 1197.1.
19

20 (c) The civil penalties provided for in this section are in addition to any other civil or
21 criminal penalty provided by law.
22

23 150. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
24 the LWDA and Defendants on March 19, 2024 (LWDA-CM-1017402-24) addressing in detail the
25 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
26 theories to support the alleged violations and requested penalties. The LWDA has not provided
27 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
28 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

- 1 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 2 15. For penalties under Labor Code § 558, as may be proven;
- 3 16. For an order enjoining Defendants and their agents, servants, and employees, and
- 4 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 5 duties adumbrated in this Complaint;
- 6 17. For other wages and penalties under the Labor Code as may be proven;
- 7 18. For all general, special, and incidental damages as may be proven;
- 8 19. For an award of pre-judgment and post-judgment interest;
- 9 20. For an award providing for the payment of the costs of this suit;
- 10 21. For an award of attorneys' fees; and
- 11 22. For such other and further relief as this Court may deem proper and just.

12

13 DATED: May 23, 2024

D.LAW, INC.

14

15 By



Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff ALBERTO MICHEL
GALINDO and all others similarly situated

16

17

18

19

20

21

22

23

24

25

26

27

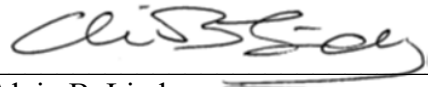
28

DEMAND FOR JURY TRIAL

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

DATED: May 23, 2024

D.LAW, INC.

By 
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff ALBERTO MICHEL
GALINDO and all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO:

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

On May 23, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

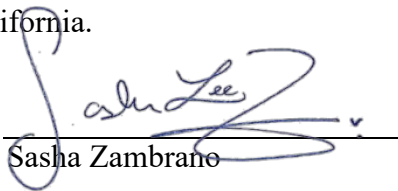
Brittany L. McCarthy
blmccarthy@littler.com
LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
San Diego, California 92101

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

[X] (COURTESY COPY BY ELECTRONIC SERVICE) I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

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

Executed on May 23, 2024, at Glendale, California.


Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
Short Title: Galindo vs Specialized Education Services Inc [E-FILE]	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 37-2024-00012937-CU-OE-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

Electronic Filing Summary Data

Electronically Submitted By: Alvin Lindsay
On Behalf of: Alberto Galindo
Transaction Number: 22068801
Court Received Date: 05/23/2024

Filed Date: 05/23/2024
Filed Time: 12:17 PM

Fee Amount Assessed:
Case Number: 37-2024-00012937-CU-OE-CTL
Case Title: Galindo vs Specialized Education Services Inc [E-FILE]
Location: Central
Case Type: Other employment
Case Category: Civil - Unlimited
Jurisdictional Amount: > 35000

Status

Accepted

Documents Electronically Filed/Received

Amended Complaint
(First)

Comments

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: LegalConnect
Email: support@legalconnect.com
Contact Person: LEGALCONNECT Support
Phone: (800) 909-6859