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Attorney for Plaintiff,
HUGO LEE HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF VENTURA**

HUGO LEE HERNANDEZ, an individual,
on his own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

ADVANCED STRUCTURAL
TECHNOLOGIES, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

VENTURA
SUPERIOR COURT
FILED

JUN 14 2024

BRENDA L. MCCORMICK
Executive Officer and Clerk

BY: _____, Deputy

DENISE SMITH

Case No.: 2024CUOE023162

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. Labor
Code §§ 510, 1198; IWC Wage Order No.
1);**
- 2. FAILURE TO PAY MINIMUM WAGES
DUE TO ROUNDING (Cal. Labor Code
§§1194, 1194.2, 1997, 1197.1, 1198; IWC
Wage Order No. 1);**
- 3. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS (Cal. Labor Code
§§ 226.7, 512; IWC Wage Order No. 1)**
- 4. FAILURE TO PROVIDE REST PERIODS
(Cal. Labor Code § 226.7; IWC Wage
Order No. 1);**
- 5. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(Cal. Labor Code §226; IWC Wage Order
No. 1);**
- 6. FAILURE TO PAY WAGES DUE UPON
TERMINATION (Cal. Labor Code §§201-
203);**

7. **FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
8. **FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT (Cal. Labor Code §§ 6720 and Wage Order 1);**
9. **FAILURE TO PAY BONUS (Cal. Labor Code §§ 200 et seq.);**
10. **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5);**
11. **UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.); and**
12. **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

DEMAND FOR A JURY TRIAL

All allegations in this Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

HUGO LEE HERNANDEZ (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by Advanced Structural Technologies, Inc. (“AST”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay overtime wages, failure to pay minimum wages due to rounding, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages due on termination, failure to reimburse business expenses, failure to adopt standards that minimize excessive heat, failure to pay bonus, and failure to allow inspection of employment records.

1 2. Plaintiffs have worked as employees for Defendant at its factory in Oxnard,
2 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
3 conditions created by Defendant's efforts to maximize profits and tightly control labor costs.

4 3. Plaintiff, like his co-workers whom Defendant also employed during the
5 applicable limitations period, spent their workdays at Defendant's factory in Oxnard under illegal
6 and highly regimented circumstances. That regimen results from Defendant's insistence to
7 strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor
8 costs, failing to pay overtime, failing to pay minimum wages, refusing to provide meal periods,
9 refusing to provide rest breaks, not paying the required extra hour for missed meal and rest breaks,
10 failing to reimburse business expenses, failing to adopt standards that minimize excessive heat,
11 failing to pay bonuses, failing to allow inspection of employment records, and by using other
12 unlawful stratagems to ensure that labor costs remain artificially low.

13 4. Plaintiff brings this class action to recover, among other things, wages and
14 penalties from unpaid wages earned and due, including but not limited to premium overtime
15 wages, minimum wages due to illegal rounding, late and missed rest break wages, wages due to
16 discharged or quitting employees, penalties for failure to provide accurate itemized wage
17 statements, reimbursement of business expenses, failure to adopt standards that minimize
18 excessive heat, failure to pay bonuses, failure to allow inspection of employment records and
19 interest, attorneys' fees, costs, and expenses.

20 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
21 himself and all members of the class, to compensate these workers for the unpaid wages and to
22 protect current and future workers of Defendant from being subjected to similar wage theft and
23 otherwise unlawful working conditions.

24 6. Plaintiff also brings an action seeking relief for Defendant's violations of
25 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
26 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
27 business practices, as well as injunctive relief.

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8. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 395 and 395.5, because the claims made, and the Labor Code violations as against the persons identified herein, occurred in the County of Ventura and because Defendant owned and operated its business in the County of Ventura.

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Ventura County, California;
- (b) Employed as an hourly employee for Defendant in Oxnard, California;
- (c) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and the applicable Wage Orders;
- (d) Did not receive minimum wages due to illegal rounding in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;

- (h) When he was terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;
- (i) Was not reimbursed for business expenses as required by *Labor Code* §2802;
- (j) Was exposed to excessive heat;
- (k) Was not paid a bonus as promised; and
- (l) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANT

10. Plaintiff is informed and believes, and based on that information and belief, alleges Defendant AST is, and at all times mentioned herein was:

- (a) A Delaware corporation with a principal place of business at 950 Richmond Avenue, Oxnard, California. Defendant has been authorized to do business and has been doing business in the County of Ventura;
- (b) The former employer of Plaintiff and the current and former employer of the putative Class members;
- (c) Paid Plaintiff and all Class Members on an hourly basis;
- (d) Failed to pay Plaintiff and all putative Class members premium overtime wages;
- (e) Failed to pay Plaintiff and all putative Class members minimum wages due to illegal rounding;
- (f) Failed to provide Plaintiff and all putative Class members with meal and rest periods, failed to provide Plaintiff and all putative Class members with accurate itemized wage statements and failed to issue final paychecks timely to Plaintiff and all putative Class members;
- (g) Failed to reimburse for business expenses;
- (h) Failed to minimize excessive heat standards;
- (i) Failed to pay bonuses as promised; and

1 (j) Was not provided his personnel records. Each of these was a violation of
2 the Labor Code.

3 11. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
5 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
6 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true names
7 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

8 12. Plaintiff is informed and believes, and based on that information and belief alleges,
9 that Defendant DOES 1 through 100 are persons, corporations or other entities which reside in or
10 are authorized to do, or are otherwise doing, business in the State of California. Specifically,
11 DOES 1 through 100 maintain offices, operate businesses, employ persons, and conduct business
12 in the County of Ventura. Each of the Defendants DOES 1 through 100 was the managerial agent,
13 employee, predecessor, successor, joint-venturers, co-conspirator, alter ego and/or representative
14 of one or more of the other Defendants named herein, and acting with permission, authorization,
15 and/or ratification and consent of the other Defendants.

16 13. Plaintiff is informed and believes, and based on that information and belief alleges,
17 that the Defendants named in this Amended Complaint, including DOES 1 through 100,
18 inclusive, are responsible in some manner for one or more of the events and happenings that
19 proximately caused the injuries and damages hereinafter alleged.

20 14. Plaintiff is informed and believes, and based on that information and belief alleges,
21 that Defendants named in this Amended Complaint, including DOES 1 through 100, inclusive,
22 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the
23 other Defendants and that each Defendant was acting within the course and scope of his, hers or
24 its authority as the agent, servant and/or employee of each of the other Defendants. Consequently,
25 all of the Defendants are jointly and severally liable to the Plaintiff and the Class for the damages
26 sustained as a proximate result of their conduct.

27 15. Plaintiff is informed and believes, and based on that information and belief alleges,
28 that the Defendants named in this Amended Complaint, including DOES 1 through 100,

1 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
2 themselves and entered into a combination and systemized campaign of activity to *inter alia*
3 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation
4 of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of
5 the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and
6 Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all
7 appearances, Defendants, and each of them, represented a unified body so that the actions of one
8 Defendant was accomplished in concert with and with the knowledge, ratification, authorization
9 and approval of each of the other Defendants.

10 **CLASS ALLEGATIONS**

11 **A. The Definition of the Class**

12 16. The Class ("the Class") is defined as follows:

13 (a) "All current and former employees who were hourly paid employees of
14 Defendant and worked for AST in California at any time during the period
15 commencing on the date that is four (4) years prior to the filing of this Complaint
16 and continuing through the present date (the "Class Period")."

17 (b) "All persons who were hourly paid employees of Defendant and worked for
18 AST in California and left the employ of Defendant at any time during the
19 period commencing on the date that is within one (1) year prior to the filing of
20 this Complaint and continuing through the present date (the "Class Period")."

21 Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
22 amend or modify the Class description with greater specificity or further division
23 into subclasses or limitation to particular issues.

24 **B. Maintenance of the Action**

25 17. Plaintiff brings this action individually and on behalf of himself and as
26 representative of all similarly situated persons under Business & Professions Code §§ 17203 and
27 17204 and Code of Civil Procedure § 382.

28 **C. The Class Requisites**

1 18. At all material times, Plaintiff was a member of the Class.

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3 19. The Class action meets the statutory prerequisites for maintaining a class action
4 under Code of Civil Procedure § 382 in that:

5 (a) The persons who comprise the Class are so numerous that the joinder of all
6 those persons is impracticable and the disposition of their claims as a Class
7 will benefit the parties and the Court;

8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the Class and will apply
10 uniformly to every Class member;

11 (c) The claims of the representative Plaintiff are typical of the claims of each
12 Class member. Plaintiff, like all Class members, has sustained damages
13 arising from Defendant's violations of the laws of the State of California.
14 Plaintiff, and the Class members, were and are similarly or identically
15 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
16 pattern of misconduct engaged in by the Defendant;

17 (d) The representative Plaintiff has, and will continue to, fairly and adequately
18 represent and protect the interests of the Class and has retained counsel
19 who are competent and experienced in class action litigation. There are no
20 material conflicts between the claims of the representative Plaintiff and the
21 Class members that would make class certification inappropriate. Counsel
22 for the Class will vigorously assert the claims of all Class members.

23 20. The persons who comprise the Class are so numerous that joining all of them is
24 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
25 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
26 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
27 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for Plaintiff
28 are experienced, qualified and generally able to conduct complex class action litigation.

1 21. The Court should permit the action to be maintained as a class action under *Code*
2 *of Civil Procedure* § 382 because:

- 3 (a) The questions of law and fact common to the Class predominate over any
4 question affecting only individual members;
- 5 (b) A class action is superior to any other available method for fairly and
6 efficiently adjudicating the claims of the Class;
- 7 (c) The Class members are so numerous that it is impractical to bring all of
8 them before the Court;
- 9 (d) Plaintiff and other Class members will not be able to obtain effective and
10 economic legal redress unless the action is maintained as a class action;
- 11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the statutory violations, and in obtaining adequate
13 compensation for the damages and injuries for which Defendant is
14 responsible in an amount sufficient to adequately compensate the Class
15 members;
- 16 (f) Without Class certification, the prosecution of separate actions by
17 individual Class members would create a risk of:
- 18 i. Inconsistent or varying adjudications for individual Class
19 members that would establish incompatible standards of conduct
20 for Defendant; and/or,
- 21 ii. Adjudication for individual Class members that would, as a
22 practical matter, dispose of other non-party members' interests, or
23 that would substantially impair or impede the non-parties' ability to
24 protect their interests, by, for example, potentially exhausting the
25 funds available from Defendant, and
- 26 (g) Defendant has acted or refused to act on grounds generally applicable to
27 the Classes, making final injunctive relief appropriate for the Class, as a
28 whole.

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3 22. Plaintiff contemplates eventually issuing notice to the proposed Class Members
4 that would set forth the subject and nature of the action. The Defendant's own business records
5 may be utilized for assisting in preparing and issuing the contemplated notice. To the extent that
6 any further notices may be required, Plaintiff would contemplate using additional media and/or
7 mailing.

8 **GENERAL ALLEGATIONS**

9 23. At all times material hereto, Defendant has been and is, a manufacturer of auto
10 wheel rims and aerospace parts.

11 24. Plaintiff and members of the Class were employed as engineers/facility managers
12 and other factory workers by Defendant in California at various times during the Class Period.

13 **THE CONDUCT**

14 25. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
15 Plaintiff and members of the Class wages and compensation owed under California law.

16 26. Starting on or about May 9, 2022, and continuing to June 12, 2023, Defendant
17 employed Plaintiff on an hourly basis as an Engineer/Facility Manager at its factory in Oxnard,
18 California.

19 27. While employed by Defendant as an Engineer/Facility Manager, Plaintiff was paid
20 approximately \$40.00 per hour.

21 28. The employment by Defendant of the Class Members, and each of them, is
22 governed by Industrial Welfare Commission Wage Order 1, which covers those persons
23 employed in the manufacturing industry.

24 **FAILURE TO PAY OVERTIME/MINIMUM WAGES DUE TO ROUNDING**

25 29. Under California law, non-exempt employees, as defined by Wage Order 1, are
26 entitled to premium wages for overtime worked. Under California law, an hourly paid employee
27 is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours
28 of work in a week or work seven days in a row.

1 30. Under California law, non-exempt employees, as defined by the applicable Wage
2 Order, are entitled to minimum wages. Labor Code Section 1197 states the California requirement
3 that employees must be paid at least the minimum wage fixed by the Commission or by any
4 applicable state or local law, and any payment of less than the minimum wage is unlawful.
5 Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal
6 minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of
7 this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order No. 1-
8 2001, obligates employers to pay each employee minimum wages for all hours worked.

9 31. These minimum wage standards apply to each hour employees worked or were
10 subject to control by the employer for which they were not paid. Therefore, an employer’s failure
11 to pay for any particular hour of time worked by an employee or subject to the employer’s control
12 is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results
13 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
14 314, 324 (2005).

15 32. At times, Defendant’s thumbprint scanner did not work, and Plaintiff and
16 members of the Class had to report their time rounded to the quarter hour. As a result, during
17 this period, it was the practice and policy of Defendant not to pay employees at appropriate
18 overtime rates. Monies for unpaid overtime and minimum wages remain due and owing.

19 33. Defendant required Plaintiff and the Class to regularly perform compensable tasks
20 pre- and post-shift off-the-clock for which they did not receive any compensation. Specifically,
21 in order to enter the factory through the side entrance, Plaintiff and Class members had to go
22 through a turnstile with their badge. This process took about 1 minute each day. Plaintiff and
23 members of the Class were only able to enter through the front entrance if it was open, which at
24 times it was not. Further, about 1 to 2 times per week, Plaintiff and members of the Class had to
25 wait between 1 to 2 minutes to clock in. Additionally, 2 to 3 times per week, Plaintiff and Class
26 members had to remain and help employees after clocking out. Lastly, Plaintiff and Class
27 members were required to use their cell phones both on and off the clock for work-related
28 activities. Texting and calling to Plaintiff’s supervisor took approximately 1 hour per week.

1 34. Further, Class members were required to wear uniforms and were required to put
2 their uniforms on at work. The locker rooms where the uniforms were stored were located before
3 the time clocks. AST cleaned the uniforms, so they had to be left at the factory. Thus, Class
4 members must perform mandatory work activities of donning and doffing their uniforms before
5 they clock in. As a result, Class members were required to don and doff their uniforms without
6 compensation. Class members are entitled to overtime pay for any time spent donning and doffing
7 off the clock.

8 35. Plaintiff and the Class were not paid overtime and minimum wages due to
9 rounding and off-the-clock work.

10 36. At all times during the relevant time period, Plaintiff and the Class routinely
11 worked schedules such that they were due pay at overtime and minimum wage rates. During this
12 period, it was the practice and policy of Defendant to not pay employees overtime and minimum
13 wages. Monies for unpaid overtime and minimum wages remain due and owing.

14 **INTERRUPTED AND/OR LATE MEAL BREAKS**

15 37. Under California law, non-exempt employees, as defined by Wage Order 1, are
16 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
17 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-
18 exempt employees are entitled to one hour of pay at their regular pay rate for each day the
19 requisite rest and/or meal periods are not provided.

20 38. Plaintiff and Class Members were at times afforded meal breaks late, and/or meal
21 breaks were interrupted. Further, Plaintiff and Class members were required to carry their
22 personal cell phones with them during work hours and to keep them on during their meal and rest
23 breaks. At times, Plaintiff and Class members clocked out for their meal breaks and were then
24 interrupted and had to return to work.

25 39. Defendant's policies and procedures were applied to all non-exempt employees in
26 California and resulted in non-exempt employees working time that was not compensated by any
27 wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders. As a result,
28 Defendant owes wages at the legal overtime rate for unpaid overtime to each of their California

1 non-exempt employees whose daily hours were reduced even though their meal periods were
2 interrupted and/or were never afforded.

3 **REST BREAKS NOT AFFORDED AND/OR INTERRUPTED**

4 40. Plaintiff and Class members' rest breaks were at times not afforded. Further, rest
5 breaks were routinely interrupted.

6 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

7 41. As a result of Defendant's failure to pay employees at required overtime rates and
8 minimum wages due to illegal rounding and premium pay for missed meal/rest breaks, the wage
9 statements issued to the employees did not comply with *Labor Code* §226 and California
10 Industrial Welfare Commission ("IWC") Wage Order 1 in that they did not accurately reflect all
11 wages earned and due and owing.

12 **FAILURE TO PAY WAGES ON TERMINATION**

13 42. As a further result of Defendant's failure to pay employees at required overtime
14 rates and minimum wages due to illegal rounding and premium pay for missed meal/rest breaks,
15 when the employees left their employ, they were not timely paid all wages due them, as required
16 by *Labor Code* §§ 201, 202 and Wage Order 1. Further, it was the practice of Defendant to not
17 pay employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202
18 and Wage Order 1.

19 **LACK OF EXPENSE REIMBURSEMENT**

20 43. Defendant failed to reimburse Plaintiff and members of the Class for business-
21 related expenses, such as cell phone and vehicle use. Thus, Defendant failed to reimburse Plaintiff
22 and Class members for these necessary business expenses.

23 44. Labor Code section 1198 requires an employer to comply with the standard
24 conditions of labor for California employees as set forth by the IWC, Section 15 of Wage Order
25 1, which states:

26 (A) The temperature maintained in each work area shall provide reasonable comfort
27 consistent with industry-wide standards for the nature of the process and the work
28 performed.

1 (B) If excessive heat or humidity is created by the work process, the employer shall take
2 all feasible means to reduce such excessive heat or humidity to a degree providing
3 reasonable comfort.

4 45. In violation of Labor Code section 6720, Defendant failed to provide Plaintiff and
5 other current and former hourly non-exempt employees employed by Defendant who worked at
6 Defendant's warehouse in California with reasonable comfort by maintaining the indoor
7 temperature within the range of industry standards by, *inter alia*, providing adequate air
8 conditioning or ventilation, in violation of Labor Code section 1198 and section 15 of Wage
9 Order. Defendant's warehouse did not have proper ventilation and/or air conditioning. The
10 warehouse only had fans. The temperature inside the warehouse was extremely hot for the
11 workers.

12 46. Defendant's violations of Wage Order 1 constituted violations of Labor Code
13 section 1198, which prohibits employment under conditions of labor that violate the Wage
14 Orders.

15 47. Defendant failed to pay Plaintiff and members of the Class bonuses as promised.
16 Plaintiff was promised a \$4,000 bonus for setting up a Tool Crib, which he did. However, Plaintiff
17 was never paid the bonus and his paystubs do not show the payment of any bonus to Plaintiff.

18 48. California law uses the terms "compensation" and "pay" interchangeably and
19 requires that all applicable remuneration, including but not limited to, commissions, and/or non-
20 discretionary bonuses, and/or gift cards, etc., be included when calculating an employee's regular
21 rate of pay.

22 49. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
23 should have known that Plaintiff and Class members were entitled to be paid at a regular rate of
24 pay, and corresponding overtime rate of pay, that included as eligible income all income derived
25 from non-discretionary bonuses, gift cards and/or other forms of compensation.

26 50. Defendant failed to properly pay and calculate overtime and minimum wages due
27 to excluding bonuses from the regular rate of pay calculations. Such bonuses are required under
28 California law to be included in an employee's regular rate of pay for overtime and minimum

wage calculations. Defendant failed to do so, thereby failing to pay employees their full wages as required under the Labor Code.

51. Defendant failed to correctly calculate Plaintiff and members of the Class's regular rate of pay to include all applicable remuneration, including, but not limited to, bonuses, etc. Specifically, Defendant promised Plaintiff a \$4,000 bonus. However, Plaintiff's paystubs do not reflect any bonus paid to Plaintiff.

52. Thus, Defendant failed to correctly calculate Plaintiff and members of the Class's regular rate of pay to include all applicable bonuses.

53. Defendant failed to allow Plaintiff and Class members to timely inspect their records and payroll files.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(Labor Code §§510, 558, 1194.3 and Wage Order 1 By Plaintiffs Against Defendant and Does 1-100)

54. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

55. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code §§510, 1194, and 1198, and IWC Wage Order No. 1, Defendant was required to compensate Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

56. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime compensation could recover the unpaid balance of the full amount of overtime wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

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1 57. Pursuant to IWC Wage Order No. 1-2001, § 3, “Employment beyond eight (8)
2 hours in any workday is permissible provided the employee is compensated for such overtime at
3 not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours
4 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

5 58. California Labor Code section 558 provides in pertinent part:

6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any provision
8 regulating hours and days of work in any order of the Industrial Welfare
9 Commission shall be subject to a civil penalty as follows:

10 (1) For any initial violation, fifty dollars (\$50) for each underpaid
11 employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

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

20 59. Throughout Plaintiff’s employment, Plaintiff worked overtime hours and was not
21 paid overtime pay due to Defendant’s rounding down of hours.

22 60. Defendants required Plaintiff and the Class to regularly perform compensable
23 tasks pre- and post-shift off-the-clock for which they did not receive any compensation.
24 Specifically, in order to enter the factory through the side entrance, Plaintiff and Class members
25 had to go through a turnstile with their badge. This process took about 1 minute each day. Plaintiff
26 and members of the Class were only able to enter through the front entrance if it was open, which
27 at times it was not. Further, about 1 to 2 times per week, Plaintiff and members of the Class had
28 to wait between 1 to 2 minutes to clock in. Additionally, 2 to 3 times per week, Plaintiff and Class

1 members had to remain and help employees after clocking out. Lastly, Plaintiff and Class
2 members were required to use their personal cell phones both on and off the clock for work-
3 related activities. The texting and calling to Plaintiff's supervisor took approximately 1 hour per
4 week.

5 61. Further, Defendant required Class members to don and doff uniforms before being
6 permitted to clock in to begin their work shifts. The amount of time spent by Class members on
7 donning and doffing uniforms was not *de minimis*.

8 62. Further, Defendant failed to blend bonuses when calculating Plaintiff and Class
9 members' regular rate in workweeks when they earned such pay and worked overtime. As such,
10 Plaintiff and Class members were paid at an overtime rate less than the rate required under
11 California law.

12 63. Throughout Plaintiff's employment, Defendant failed and refused to pay and
13 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

14 64. The foregoing overtime compensation is owed and unpaid. As a direct and
15 proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class Members
16 suffered damages in an amount to be proven at trial.

17 65. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
18 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
19 attorneys' fees, costs and interest.

20 66. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Amended Complaint.

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

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1 68. *Labor Code* § 1197 states the California requirement that employees must be paid
2 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
3 wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the
4 legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount
5 of this minimum wage.” IWC Wage Order 1-2001 also obligates employers to pay each employee
6 minimum wages for all hours worked. These minimum wage standards apply to each hour
7 employees worked for which they were not paid. Therefore, an employer’s failure to pay for any
8 particular hour of time worked by an employee is unlawful, even if averaging an employee’s total
9 pay over all hours worked, paid or not, results in an average hourly wage above minimum wage.
10 *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

11 69. Pursuant to Wage Order 1, Defendant is required to pay the members of the Class
12 for all hours worked, meaning the time during which an employee is subject to the control of an
13 employer, including all the time the employee is suffered or permitted to work, whether or not
14 required to do so.

15 70. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
16 the standard conditions of labor fixed by the commission shall be the maximum hours of work
17 and the standard conditions of labor for employees. The employment of any employee for longer
18 hours than those fixed by the order or under conditions of labor prohibited by the order is
19 unlawful.”

20 71. Defendant failed to satisfy minimum wage requirements because they improperly
21 rounded down Plaintiff’s actual hours worked and required Plaintiff and Class members to engage
22 in activities off the clock in violation of *Labor Code* §§ 1197, 1198 and Wage Order 1.

23 72. Defendant’s pattern, practice, and uniform administration of corporate policy
24 regarding illegal employee compensation as described herein is unlawful and creates an
25 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the Class
26 in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
27 appropriate rate.

28 ///

1 73. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
3 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
4 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
5 time associated with the overtime for which they received no compensation. *See Sillah v.*
6 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
7 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
8 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp.
9 3d 1115, 1132-33 (N.D. Cal. 2016).

10 74. Plaintiff and the other Class Members suffered and continue to suffer losses
11 related to the use and enjoyment of compensation due and owing to them as a direct result of
12 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
13 proof at trial and within the jurisdictional limitations of this Court.

14 75. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
15 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
16 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

17 **THIRD CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

19 **(IWC Wage Order No. 1; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant and**
20 **Does 1 through 100)**

21 76. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Amended Complaint.

23 77. California Labor Code §226.7(a) prohibits an employer from requiring an
24 employee to work during any meal period mandated by an applicable Industrial Wage Order.
25 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
26 employee to work during a meal or rest break or recovery period mandated pursuant to an
27 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
28 Commission..."

1 78. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 79. IWC Order No. 1-2001(11)(A) provides, in relevant part: "No employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30 minutes, except that when a work period of not more than six (6) hours will complete
6 the day's work the meal period may be waived by mutual consent of the employer and the
7 employee."

8 80. IWC Order No. 1-2001 (11)(c) further provides, in relevant part: "Unless the
9 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
10 considered an 'on duty' meal period and counted as time worked."

11 81. Section 512(a) of the California Labor Code provides, in relevant part, that:
12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less than
14 30-minutes, except that if the total work period per day of the employee is no
15 more than six hours, the meal period may be waived by mutual consent of both
16 the employer and employee. An employer may not employ an employee for a
17 work period of more than 10 hours per day without providing the employee with
18 a second meal period of not less than 30-minutes, except that if the total hours
19 worked is no more than 12 hours, the second meal period may be waived by
20 mutual consent of the employer and the employee only if the first meal period
21 was not waived.

22 82. The Labor Code and Wage Order provisions cited above require California
23 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
24 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
25 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
26 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
27 of their shifts.

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83. As alleged herein, Defendant failed to relieve employees of duties for timely meal breaks throughout the Class Period, Plaintiff and the members of the Class's meal periods were routinely interrupted, and Plaintiff and members of the Class were not afforded a full 30-minute meal breaks. Further, Plaintiff and Class members' meal breaks were afforded late. Plaintiff and members of the Class were required to carry their personal cell phones during work hours and were required to keep their phones on during their meal/rest breaks.

84. Under California law, employers must also record their employees' meal periods: "Every employer shall keep accurate information with respect to each employee, including the following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease ... need not be recorded." IWC Order No. 1, § (7)(A)(3). Where the employer has failed to keep records required by statute, the consequences of such failure should fall on the employer, not the employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the Wage Order to track meal periods unless "all work ceases," Defendant knew or should have known its employees were regularly missing meal periods during the Class Period.

85. Defendant has a policy or practice of failing to ensure that Plaintiff and members of the class take the meal periods required by California Labor Code §226.7 and IWC Wage Order No. 1-2001 §11.

86. By their actions in not affording Plaintiff and Class members meal periods and/or not affording them uninterrupted meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide employees with statutory timely off-duty meal periods.

87. Defendant also has a policy or practice of failing to pay each of their employees who were not provided with a meal period as required an additional one hour of compensation at each employee's regular rate of pay.

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1 88. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to bring
2 a private right of action to recover wages due based on the deprivation of timely meal periods
3 under Cal. Labor Code § 226.7(b).

4 89. As a direct and proximate result of Defendant's unlawful conduct as alleged
5 herein, Plaintiff and members of the Class have sustained economic damages, including but not
6 limited to unpaid wages and lost interest, in an amount to be established at trial and are entitled
7 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
8 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
9 Orders.

10 **FOURTH CAUSE OF ACTION**
11 **FOR FAILURE TO PROVIDE REST PERIODS**
12 **(Labor Code § 226.7 and IWC Wage Order No. 1 By Plaintiffs Against Defendant and**
13 **Does 1 through 100)**

14 90. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Amended Complaint.

16 91. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
17 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per
18 four hours of work, or major fraction thereof.

19 92. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
20 fails to provide an employee with rest periods in accordance with those provisions, the employer
21 shall pay the employee one hour of pay at the employee's regular rate of compensation for each
22 workday that the rest periods were not so provided.

23 93. Defendant has intentionally and improperly denied any rest periods and/or
24 uninterrupted rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and the
25 applicable Wage Order.

26 94. At all times relevant hereto, Plaintiff and members of the Class have worked eight
27 (8) or more hours daily.

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1 95. At all times relevant hereto, Defendant failed to provide rest periods as required
2 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members' rest breaks
3 were routinely interrupted and/or not afforded.

4 96. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
5 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
6 amounts that are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional
7 limits of the Court, and which will be ascertained according to proof at trial.

8 **FIFTH CAUSE OF ACTION**

9 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

10 **ITEMIZED STATEMENTS**

11 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

12 97. Plaintiff and the Class reallege and incorporate by reference all of the allegations
13 set forth in this Amended Complaint.

14 98. Pursuant to the applicable IWC Wage Orders, Defendant was the employer of
15 Plaintiff and the Class.

16 99. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 1-2001
17 section 7, Defendant is required to maintain and provide accurate records relating to employee
18 compensation, including all formulas and production records used to calculate wages due.

19 100. Defendant is further required to provide, *inter alia*, semimonthly or at the time of
20 each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
21 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
22 employee is being paid; (5) the name of the employee; and (6) the name and address of the legal
23 entity that is the employee's actual employer. Cal. Labor Code §226(a).

24 101. As a matter of policy and practice, Defendant failed to list hours for "Regular"
25 amounts paid to Plaintiff and Class members. Additionally, Defendant failed to list rates for
26 "Regular Earnings," "Overtime Earnings," "Vacation," and "Regular" amounts paid to Plaintiff
27 and members of the Class.

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1 102. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
2 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
3 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in
4 which the employer knowingly and intentionally failed to provide accurate itemized statements
5 to the employee causing the employee to suffer injury.

6 103. Notwithstanding these provisions, Defendant has engaged in a uniform practice
7 of refusing to maintain and provide the accurate records and wage statements required by
8 California law.

9 104. Throughout the Class Period, Defendant intentionally and knowingly provided
10 Plaintiff and other members of the Class with weekly itemized wage statements containing
11 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
12 the payments owed to Plaintiff and the members of the Class for overtime compensation,
13 minimum wages, untimely or missed meal and rest periods, reimbursement for business expenses,
14 bonuses, were not included in gross wages earned by Plaintiff and members of the Class. Further,
15 Defendant failed to furnish Plaintiff and the Class, upon payment of wages, wage statements that
16 show meal breaks. Additionally, Plaintiff and Class members' wage statements do not accurately
17 show their bonuses.

18 105. As a result, Plaintiff and members of the Class have been injured by having been
19 deprived of the true facts pertaining to their compensation and employment.

20 106. Plaintiff and members of the Class were damaged by these failures because,
21 among other things, the failures led them to believe that they were not entitled to overtime
22 compensation, minimum wages, pay for meal and rest periods not provided, reimbursement for
23 business expenses, bonuses, even though they were so entitled and these failures hindered them
24 from determining the amounts of wages owed to them.

25 107. Plaintiff and members of the Class are entitled to the amounts provided in Labor
26 Code §226(e), plus attorneys' fees and costs.

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108. As a result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendant's improper conduct.

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)

109. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

110. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

111. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

112. Plaintiff and the Class were discharged and/or resigned from Defendant's employ, and Defendant willfully failed to pay Plaintiff and the Class wages due them.

113. Plaintiff's last paycheck was not complete, and he is still owed unpaid break premiums, overtime and other wages.

114. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

SEVENTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)

115. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

116. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

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117. Defendant required Plaintiff and Class members to drive during work hours to different buildings using their personal vehicles. However, Defendant failed to reimburse Plaintiff and members of the Class for their gas and mileage expenses incurred on Defendant's behalf.

118. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their personal cell phones and vehicles but failed to indemnify Plaintiff and Class members for all their business-related expenses in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their personal cell phones and vehicles, including wear and tear, for work-related purposes.

119. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

120. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT

(Labor Code § 6720, Wage Order No. 1 By Plaintiffs against Defendant and Does 1 through 100)

121. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

122. California *Labor Code* § 6720 sets forth requirements for adapting a standard that minimizes heat-related illness and injury among workers working in indoor places. The provision states the following: “[t]he standard shall be based on environmental temperatures, work activity levels, and other factors.”

/ / /

123. Wage Order 1 section 15(A) provides the following: “The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.” Section 15(B) states, “[i]f excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.”

124. Defendant failed to comply with *California Labor Code* §§ 6720 and Wage Order 1 by maintaining an excessively hot working environment. Defendant’s warehouse did not have proper ventilation and/or air conditioning, and the temperature inside the warehouse was excessively hot.

125. Defendant failed to adopt standards to reduce heat-related illnesses, and as a result, Defendant has failed to maintain a safe indoor working environment.

126. Plaintiff and Class Members request recovery and penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to the California Labor Code.

NINTH CAUSE OF ACTION

FAILURE TO PAY BONUS

(Labor Code §§ 200 et seq. By Plaintiffs against Defendant and Does 1 through 100)

127. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Amended Complaint.

128. Labor Code section 200 et seq. provides that an employer is required to pay wages to employees.

129. Defendant promised to pay Plaintiff and members of the Class certain bonuses. Plaintiff was promised a \$4,000 bonus for setting up a tool crib. Plaintiff set up the tool crib, but Defendant never paid him the \$4,000 bonus as promised. Plaintiff’s paystubs do not show any bonuses paid to him.

130. Defendant has failed and refused to pay Plaintiff and Class members their earned bonuses as agreed.

131. During Plaintiff and Class members’ employment with AST, Plaintiff and Class members worked many hours in order to earn their bonuses, yet they never received them.

1 Plaintiff and Class members have performed all of the duties and obligations required of them
2 that would entitle them to receive their bonuses.

3 132. AST's failure to pay the bonuses was intentional and willful and without cause or
4 other reason and was contrary to Defendant's promises to Plaintiff and Class members. As a result
5 of the wrongful acts of AST, as alleged herein, Plaintiff and Class members are entitled to treble
6 damages and additional damages as specifically provided in Labor Code §§ 202, 203 and 206.

7 133. AST, therefore, owes wages to Plaintiff pursuant to the Labor Code and IWC
8 Wage Order 1 in the amount of at least \$12,000.00, according to proof.

9 134. As a result of the wrongful acts of AST, as alleged herein, Plaintiff and Class
10 members are entitled to reasonable attorneys' fees and costs of suit as specifically provided in
11 Cal. Labor Code §§ 218.5, 510 and 1194(a).

12 **TENTH CAUSE OF ACTION**

13 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

14 ***(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)***

15 135. Plaintiff and the Class reallege and incorporate by reference all of the allegations
16 set forth in this Amended Complaint.

17 136. California Labor Code Section 1198.5 provides:

18 (a) Every current and former employee, or his or her representative, has the right
19 to inspect and receive a copy of the personnel records that the employer
20 maintains relating to the employee's performance or to any grievance
21 concerning the employee.

22 (b) The employer shall make the contents of those personnel records available
23 for inspection to the current or former employee, or his or her representative,
24 at reasonable intervals and at reasonable times, but not later than 30 calendar
25 days from the date the employer receives a written request, unless the current
26 or former employee, or his or her representative, and the employer agree in
27 writing to a date beyond 30 calendar days to inspect the records, and the
28 agreed-upon date does not exceed 35 calendar days from the employer's

1 receipt of the written request to inspect the records. Upon a written request
2 from a current or former employee, or his or her representative, the employer
3 shall also provide a copy of the personnel records,..... later than 30 calendar
4 days from the date the employer receives the request...

5 (k) If an employer fails to permit a current or former employee, or his or her
6 representative, to inspect or copy personnel records within the times specified in
7 this section... the current or former employee may recover a penalty of seven
8 hundred fifty dollars (\$750) from the employer.

9 (1) A current or former employee may also bring an action for injunctive relief
10 to obtain compliance with this section, and may recover costs and reasonable
11 attorney's fees in such an action.

12 137. Additionally, pursuant to Wage Order 4, at section 7 re: Records, employers are
13 required to keep accurate payroll records on each employee, and such records must be made
14 readily available for inspection by the employee upon reasonable request. The employer must
15 also maintain accurate production records.

16 138. On or about September 15, 2023, Plaintiff's former counsel issued a written
17 request to Defendant for copies of his personnel records. Further, Plaintiff's former counsel made
18 several follow-up attempts to no avail.

19 139. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
20 include all records relating to Plaintiff's hours worked, wage statements and compensation.
21 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
22 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
23 records.

24 140. As a direct result and consequence of Defendant's failure and refusal to permit
25 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree
26 mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of
27 Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of
28 \$750 based upon Defendant's violation of §1198.

1 **ELEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
4 **through 100)**

5 141. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Amended Complaint.

7 142. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
8 Plaintiff and the Class. Defendant is also a "person," as that term is defined in Business &
9 Professions Code §17021.

10 143. The Business & Professions Code defines unfair competition as any unlawful,
11 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
12 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
13 Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) pay Plaintiff and the
14 Class meal periods not provided, (4) pay Plaintiff and the Class rest periods not provided, (5)
15 furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
16 applicable Labor Code and Industrial Welfare Commission requirements, (6) pay Plaintiff and
17 the Class wages due when leaving their employ, (7) reimburse business expenses, (8) adopt
18 standards that minimize excessive heat, (9) pay bonuses, (10) provide personnel records, all in
19 violation of Business & Professions Code §§ 17200 *et seq.*

20 144. By and through the unfair and unlawful business practices described herein,
21 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
22 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
23 Plaintiff and the Class.

24 145. All the acts described herein are violations of, among other things, the Labor Code
25 and applicable Industrial Commission Wage Orders, are unlawful and in violation of public
26 policy; and in addition, are immoral, unethical, oppressive, and unscrupulous, and thereby
27 constitute unfair and unlawful business practices in violation of Business & Professions Code §§
28 17200 *et seq.*

1 146. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
2 to restore to them the money and property which Defendant has acquired or of which Plaintiff
3 and the Class have been deprived by means of the above-described unfair and unlawful business
4 practices.

5 147. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
6 above-described business practices are unfair and unlawful and that injunctive relief should be
7 issued restraining Defendant from engaging in any of the above-described unfair and unlawful
8 business practices in the future.

9 148. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
10 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
11 practices of Defendant. As a result of the unfair and unlawful business practices described above,
12 Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant
13 is restrained from continuing to engage in these unfair and unlawful business practices. In
14 addition, Defendant should be required to disgorge the unpaid money to Plaintiff and the Class.

15 **TWELFTH CAUSE OF ACTION**

16 **(Damages Pursuant to Private Attorney General Action Against Employers)**

17 149. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Amended Complaint.

19 150. Plaintiff brings this action on his own behalf and on behalf of all current and
20 former employees of Defendants who were employed in California for the previous four years
21 seeking to recover unpaid wages, including but not limited to unpaid overtime, unpaid minimum
22 wages, inaccurate wage statements, meal period violations, and rest periods violations, waiting
23 time penalties, and failure to reimburse business expenses as set forth in this pleading.

24 151. On April 2, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by
25 and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State
26 of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
27 Certified Mail Return Receipt Requested to the defendant.

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1 152. More than 65 days have passed since the above letter, and Plaintiff's counsel has
2 not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA
3 claims.

4 153. Plaintiff has, therefore, complied with the administrative exhaustion requirements
5 of PAGA.

6 154. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount
7 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

8 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against
9 Defendant as follows:

10 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and
11 Class Members, according to proof;

12 2. For compensatory damages in the amount minimum wages due to Plaintiff and
13 Class Members, according to proof;

14 3. For payment of unpaid wages in accordance with California labor and
15 employment law;

16 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class
17 Members for each workday that a meal and/or rest period was not provided;

18 5. For compensatory damages in the amount of Plaintiff and Class Members' cell
19 phone and vehicle expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code
20 Civ. Proc. §2802(c);

21 6. For payment of Plaintiff's earned bonus in the amount of at least \$12,000.00,
22 according to proof;

23 7. For payment of Class members' earned bonuses in an amount according to proof
24 at trial;

25 8. For an award of consequential damages in Plaintiff and Class Members' favor and
26 against Defendant, in an amount to be proven at trial;

27 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

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1 10. For payment to Plaintiff and Class Members of waiting time penalties pursuant to
2 *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of
3 termination or layoff, multiplied by the total amount of days elapsed between the date of the
4 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
5 maximum of 30 days' pay, according to proof;

6 11. For specific relief, enforcing waiting time penalties of 30 days of per diem wages
7 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

8 12. For prejudgment interest accrued on all due and unpaid overtime and minimum
9 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
10 1194(a), according to proof;

11 13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
12 according to proof;

13 14. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 1-
14 2001(14)

15 15. For reasonable costs, including attorneys' fees, in an amount according to proof
16 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of Civ.*
17 *Proc.* §1021.5;

18 16. For an award of restitution of wages to Plaintiff and Class members in an amount
19 equal to the amount of wages owed and unpaid, according to proof;

20 17. A declaratory judgment that Defendant has knowingly and intentionally violated
21 the following provision of law: *Labor Code* section 6720, for failing to adopt standards that
22 minimize excessive indoor heat;

23 18. For injunctive relief requiring Defendant to comply with *Labor Code*
24 1198.5(b)(1);

25 19. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to *Cal. Labor Code* §2699(g);

27 20. For injunctive relief ordering the continuing unfair business acts and practices to
28 cease, as the Court deems just and proper;

- 1 21. For other injunctive relief ordering Defendant to notify Plaintiff and Class
2 Members that they have not been paid the proper amounts in accordance with California law;
3 22. For punitive and exemplary damages in a sum to be determined at trial; and
4 23. For such other and further relief as the Court deems just and proper.

5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff Hugo Lee Hernandez hereby respectfully requests a trial by jury for all claims
8 and issues raised in his Amended Complaint that may be entitled to a jury trial.

9
10 LIPELES LAW GROUP, APC
11 Date: June 14, 2024

12 
13 By: _____
14 Jasmine J. Badawi
15 Attorneys for Plaintiff,
16 HUGO LEE HERNANDEZ
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