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Attorneys for Plaintiff Scott Vincent Bradley,
on behalf of himself and others similarly situated

FILED
Superior Court of California
County of Los Angeles
06/25/2024

David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SCOTT VINCENT BRADLEY, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

AVMC, LLC, d/b/a TOYOTA OF
LANCASTER, a California Limited Liability
Company and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV09858

CLASS ACTION

Assigned for All Purposes To:
Hon. Kenneth R. Freeman
Dept.: 14

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 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 Provide Suitable Seating;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: April 18, 2024
Trial Date: None Set

1 Plaintiff SCOTT VINCENT BRADLEY (hereinafter “Plaintiff”), on behalf of himself and
2 all other similarly situated non-exempt, hourly workers employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all other similarly situated
7 current and former hourly Employees within the State of California who, at any time from four
8 years prior to the filing of this lawsuit, are or were employed at locations in California by
9 Defendants AVMC, LLC, d/b/a Toyota of Lancaster, a California Limited Liability Company and
10 DOES 1 through 50, inclusive (all defendants being collectively referred to as “Defendants”).
11 Plaintiff alleges that Defendants, and each of them, violated various provisions of the California
12 Labor Code, relevant orders of the Industrial Welfare Commission (“IWC”), and the California
13 Business & Professions Code, and seeks redress for these violations.

14 2. Plaintiff is a resident of California and Los Angeles County, and during the time
15 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee
16 within the State of California. Defendant AVMC, LLC, d/b/a Toyota of Lancaster (“AVMC”)
17 operates out of several facilities and offices in California. Plaintiff and the other similarly situated
18 Employees of Defendants worked in Defendants’ facilities at Defendants’ behest and without
19 being paid all wages due and without being provided all their required meal periods and rest
20 breaks. Upon information and belief, Plaintiff was employed by Defendants and shared similar job
21 duties and responsibilities, was subjected to the same policies and practices, and endured similar
22 violations at the hands of Defendants as the other Employee Class members who served in similar
23 and related positions at the AVMC facilities and offices in California.

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

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

6 4. Defendant AVMC is a California Limited Liability Company which lists with the
7 California Secretary of State its principal office and California office in Lancaster, California. It
8 lists a mailing address and an agent for service of process in San Jose, California. AVMC, LLC
9 d/b/a Toyota of Lancaster's website explains, "Our family-owned dealership has proudly served
10 drivers from across the region for over 30 years. Since we first opened our doors, our No. 1 [sic]
11 focus has been to provide our customers with an exceptional visit. . . . We invite you to explore
12 our beautiful state of the art showroom that is home to a large selection of new Toyota models,
13 including the Camry, Corolla, Prius, Highlander, RAV4 and Tacoma. . . ." Defendants' website
14 also states that: "Our Toyota factor-trained ASE-certified technicians can tackle any automotive
15 project your vehicle may have. From major repair to routine oil changes, our team will get the
16 work done fast and for a fair price. . . . In addition to our automotive services, we also sell quality
17 OEM parts and accessories directly to the public at fair prices." Defendant AVMC, LLC d/b/a
18 Toyota of Lancaster is listed as the employer on the wage statements issued to Plaintiff during his
19 employment, with the same address in Lancaster, California in Los Angeles County. Upon
20 information and belief Defendants issued similar wage statements to other similarly situated non-
21 exempt employee Class members.

22 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
24 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
25 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
26 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
27 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
28 County, as Defendants conduct business and are headquartered and employ Plaintiff and other

Class Members in Los Angeles County.

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

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

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by unlawfully miscalculating overtime rates or under-recording of hours worked and by

1 requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate
2 wage statements and timely pay all wages owed, all in violation of various provisions of the
3 California Labor Code and applicable paragraphs of the IWC Wage Orders.

4 9. During the course of Plaintiff and the Class members' employment with
5 Defendants, they were not paid all wages they were owed, including for all work performed
6 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
7 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
8 Upon information and belief, Defendants employ other non-exempt, hourly Employees at their
9 facilities in California. Upon information and belief, Defendants' employment of Plaintiff and the
10 Class members is not governed under a collective bargaining agreement.

11 10. Plaintiff was employed as Parts Specialist, and his job duties included selling auto
12 parts and providing customer service at Defendants' facility in Lancaster, California. Plaintiff
13 was generally scheduled to work forty or more hours per week, five or six days per week, which
14 resulted in shifts of approximately eight to nine hours in duration. Plaintiff's shifts were
15 generally scheduled from 7:00 a.m. to 4:00 p.m., including an unpaid one-hour meal period
16 Defendants presumed they provided. Plaintiff and Class Members were required to utilize
17 Defendant's time keeping program, called Tekion, from a computer terminal. Plaintiff, and upon
18 information and belief the other Class members, were generally required to begin working or
19 otherwise be under Defendants' control at least five minutes before 7:00 a.m. or any other
20 scheduled shift start time to wait for the computer system to boot up so they could begin work
21 promptly at their scheduled shift start time.

22 11. Several times per week, Plaintiff and upon information and belief other Class
23 members were compelled to work hours beyond the end of their respective shifts to complete the
24 job duties and work tasks Defendants required of them. Plaintiff and Class Members were
25 required to shut down their computers after clocking out on Tekion. At times, it took about one
26 minute to shut down the computer after clocking out. Moreover, at least once per week, Plaintiff
27 and Class Members had to help customers or coworkers after clocking out for about ten minutes.
28 Therefore, upon information and belief, Defendants failed to compensate Plaintiff and the Class

1 members for the time they were working performing job duties or otherwise under Defendants'
2 control before their scheduled shift start time and after their scheduled shift end time. At the end
3 of the work shift, Plaintiff would also typically remain past the end of his scheduled 4:00 p.m.
4 shift time to complete the work tasks Defendants expected him to complete during his scheduled
5 shift hours.

6 12. Further, Plaintiff and Class Members received text messages on his personal cell
7 phone from Defendants' customers while off duty. Plaintiff responded to the off the clock
8 customer communications at least 4-5 times per week for approximately 5 minutes each time
9 while off duty from work and again without being compensated for it.

10 13. Defendants did this, upon information and belief, in connection with other
11 Employees in a concerted effort to limit and restrict overtime incurred by Plaintiff and the other
12 Class members. However, given the off the clock work and issues with meal periods and their
13 timing, Plaintiff generally worked beyond his scheduled eight hour shifts. As a result of the
14 above-described off the clock work and failure to pay for all hours worked, Defendants failed to
15 pay Plaintiff and Class members overtime for several minutes at the end of work shifts which
16 Defendants did not record in timekeeping records.

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

28

1 15. Defendants also failed to accurately record on the Plaintiff's and Class Members'
2 wage statements, the amount of commissions being paid to them. Plaintiff and Class Members
3 were paid an hourly rate plus .9% of the sales in the parts department every month. Plaintiff's
4 hourly rate fluctuated between \$32.30 to \$103 per hour. But Defendants' wage statements do not
5 reflect the commissions paid in light of the sales numbers. To the extent Defendants failed to
6 include all such commissions, and any other form of non-discretionary bonus or shift differential
7 or other form of remuneration, in the regular rate used to calculate and pay overtime or to pay
8 meal or rest break premium wages and the like, they have committed systematic and ongoing
9 failure to pay all wages violations. To the extent Defendants did not pay Plaintiff and the Class
10 members an hourly rate and instead paid only commissions or on a piece-rate basis during a pay
11 period, Defendants failed to compensate Plaintiff and the Class members for all their non-
12 productive time and for their off-duty rest break time as required under applicable IWC Wage
13 Order provisions and the Labor Code, including section 226.2.

14 16. Defendants have either failed to maintain timekeeping records for Plaintiff that
15 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
16 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
17 Plaintiff in response to a timely and lawful request. By editing time records, or requiring Plaintiff
18 and the Class member to clock in and out for time periods showing less hours than were actually
19 worked or reflecting compliant meal periods that were not provided, and by failing to pay for all
20 hours worked, including at the correct rates of pay, Defendants have committed knowing and
21 intentional ongoing violations of the record keeping requirements under the Labor Code §§ 226
22 and 1174.

23 17. As a result of the above-described unlawful requirements to work off the clock,
24 the failure to accurately record all hours worked and the other wage violations they endured at
25 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
26 all wages owed to them by Defendants, including when working more than eight hours in any
27 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
28 policies and practices, Plaintiff and Class members incurred overtime hours worked for which

1 they were not adequately and completely compensated, in addition to the hours they were
2 required to work off the clock at their regular rates.

3 18. Therefore, from at least four years prior to the filing of this lawsuit and continuing
4 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
5 hours worked and failing to pay minimum wages for all time worked, as required by California
6 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
7 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
8 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
9 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
10 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants
11 paid Plaintiff and the Class members bonuses and shift differentials and other forms of
12 remuneration above and beyond their hourly pay, upon information and belief Defendants
13 miscalculated and therefore underpaid any overtime they paid during these pay periods by failing
14 to include all forms of remuneration in the regular rate used to calculate and pay overtime.

15 19. Defendants also failed to provide Plaintiff and the Class members with their
16 required first and second meal periods, and their first, second, and third required rest breaks. The
17 many and different work demands from managers did not permit those working to take their
18 required breaks or complete all required work within the scheduled times. Defendants prohibited
19 Plaintiff and Class Member from leaving the work premises during their meal periods. The
20 above described off the clock work and failure to pay for all hours worked also contributed to
21 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
22 members, as required under the Labor Code and Paragraph 11 of the applicable IWC Wage
23 Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the
24 employee Class Members to take all required 10-minute rest breaks, as required under the Labor
25 Code and Paragraph 12 of the IWC Wage Order(s).

26 20. Defendants thus also failed to schedule rest breaks and meal periods and failed to
27 ensure there was adequate staffing so that Employees could take proper meal periods and rest
28 breaks. Due to the volume of work and demands from managers, Plaintiff and Class members

1 were often unable to take a timely meal period before the start of the fifth hour of work.
2 Moreover, on days when Employees worked beyond ten hours, Defendants failed to provide them
3 with an opportunity to take a second meal period or a third rest breaks. Plaintiff and Class
4 Members were required by the Defendants to remain at the work facility during rest breaks. Even
5 when Plaintiff was able to receive a timely first meal period or able to take both rest breaks, these
6 would be interrupted by phone calls, texts, emails, and group chat messages he received to his
7 mobile phone from managers and work personnel regarding scheduling and other work-related
8 items requiring his attention. Defendants' unlawful communications often compelled Plaintiff and
9 Class members to cut their meal periods and rest breaks short to complete urgent work tasks at
10 the expense of their breaks. Upon information and belief, Defendants failed to compensate
11 Plaintiff and the Class members for the time they were under control of Defendants during their
12 meal periods and rest breaks.

13 21. The volume of work was so heavy was that it would be impossible for Plaintiff to
14 finish his tasks on time if he took all his required rest breaks. Likewise, due to the time sensitive
15 nature of his work, Plaintiff was on occasion unable to take a meal period until after his fifth hour
16 of work. On work shifts when Plaintiff typically worked more than ten (10) hours, he was
17 generally not provided a second meal period or third rest break. Even when Plaintiff was able to
18 take rest breaks or was able to take a timely meal period, his meal periods and rest breaks would
19 be interrupted by calls, texts, emails and messages from his supervisors and peers. These
20 communications routinely required that Plaintiff cut his meal periods and rest breaks short to
21 respond to them. Therefore, even when Plaintiff and Class members were provided with timely
22 meal periods and rest breaks, these would frequently be interrupted by work-related calls, texts,
23 emails, or messages which they had to respond to. Accordingly, Defendants' practices and
24 policies often resulted in late and/or interrupted meal periods and missed and/or interrupted rest
25 breaks.

26 22. Defendants thus failed to provide all the legally required unpaid, off-duty meal
27 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
28 members, as required by the applicable Wage Orders and Labor Code. Defendants did not have a

1 policy or practice which provided or recorded all the legally required unpaid, off-duty meal
2 periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Class
3 members. Plaintiff and other Class members were required to perform work as ordered by
4 Defendants or otherwise remain under Defendants' control for more than five hours during a shift,
5 or ten hours in a shift, but were often required to do so without receiving a lawful, timely, and
6 duty-free 30-minute meal break. Additionally, as addressed above, Defendants followed a practice
7 of requiring off the clock work and unlawful rounding in a manner that would impact when
8 Employees were to receive meal periods and rest breaks, thus leading to further violations.

9 23. As a result, Defendants' failure to provide Plaintiff and the Class members with all
10 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
11 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
12 either failed to maintain required records of when meal periods were actually provided or failed to
13 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
14 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
15 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
16 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
17 Defendants did pay any meal period premiums, they failed to include all forms of remuneration
18 such as bonuses and shift differentials in the regular rate used to calculate and pay it. To the extent
19 Plaintiff and the Class members worked shifts of over ten hours, upon information and belief
20 Defendants failed to provide them with a second required meal period.

21 24. Therefore, for at least four years prior to the filing of this action and through to the
22 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
23 provided with the opportunity to take required meal breaks due to Defendants' policies and
24 practices. On the occasions when Plaintiff and the Class members were provided with a meal
25 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
26 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
27 more of the following manners:

- 1 (a) Class members were not provided full thirty-minute duty free meal periods
2 for work days in excess of five hours and were not compensated one hour's
3 wages in lieu thereof, all in violation of, among others, Labor Code §§
4 226.7, 512, and the applicable Industrial Welfare Commission Wage
5 Order(s);
- 6 (b) Class members were not provided second full thirty-minute duty free meal
7 periods for work days in excess of ten hours;
- 8 (c) Class members were required to work through at least part of their daily
9 meal period(s);
- 10 (d) Meal periods were provided after five hours of continuous work during a
11 shift; and
- 12 (e) Class members were restricted in their ability to take a full thirty-minute
13 meal period.

14 25. Defendants also failed to authorize and permit Plaintiff and the Class members to
15 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
16 thereof. There were similar issues with the required net ten-minute rest breaks Plaintiff and the
17 Class members were not authorized and permitted to take as with meal periods. The work
18 demands placed upon Plaintiff, and the unlawful rounding of their hours worked, also manifested
19 in Defendants' failure to authorize, and permit duty-free, net ten-minute rest periods.

20 26. Given the constant and ongoing demands he faced and Defendants' failure to
21 adequately staff its facilities to permit employees to take breaks, Plaintiff was compelled to
22 remain on the premises performing job-related duties while also remaining under Defendants'
23 control during times when he was supposed to be enjoying a duty-free rest break. By uniformly
24 requiring Plaintiff and the other similarly situated co-workers to remain under Defendants'
25 control and on premises during rest breaks, Defendants committed systematic and ongoing rest
26 break violations. To the extent Defendants paid any rest break premium payments under Labor
27 Code § 226.7 to Plaintiff or Class members, these payments failed to include all forms of
28 remuneration in the hourly rate at which they were paid.

1 27. Defendants' management did not emphasize the requirement to provide at least
2 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If
3 and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not permitted
4 to take a second one or a third one or any breaks were untimely or impermissibly shortened.
5 Further violations occurred as Plaintiff and the Class members were required to remain under
6 Defendants' control by not being able to leave the premises and by Defendants' requirement that
7 they remain ready to respond to work requirements and job demands.

8 28. Defendants thus failed to authorize and permit Class members to take all their
9 required rest breaks. Plaintiff and the other similarly situated Class members were either not
10 authorized permitted the opportunity to take a rest break, or were required to remain under
11 Defendants' control and respond to instructions and job demands. Defendants also failed to
12 authorize and permit Employees to leave the property premises during rest breaks, or else
13 prevented them from doing so, thus further evidencing Defendants' policy and practice of
14 requiring Plaintiff and the Class members to remain under their control during required off-duty
15 rest breaks.

16 29. Defendants' policies and practices thus systematically deny and denied Plaintiff
17 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
18 periods. Employers must permit and authorizes employees to take off-duty rest periods. That is,
19 during rest periods employers must relieve employees of all duties and relinquish control over
20 how employees spend their time. Plaintiff and the Class members were and are under Defendants'
21 control when they are working through rest breaks or receiving them late or shortened.

22 30. Plaintiff and the Defendants' Employees in the Class were therefore not authorized
23 and permitted to take lawful rest periods, were systematically required by Defendants to work
24 through or during breaks, and were not provided with one hour's wages in lieu thereof. They
25 were required to remain on-duty during breaks or portions of their breaks, thus making them
26 either untimely or shortened and on-duty, and they were also effectively prevented from leaving
27 the premises during rest breaks under Defendants' policies and practices. Rest period violations
28 therefore arose in one or more of the following manners:

- 1 (a) Class members were required to work without being provided a minimum
2 ten minute rest period for every four hours or major fraction thereof worked
3 and were not compensated one hour of pay at their regular rate of
4 compensation for each workday that a rest period was not provided;
- 5 (b) Class members were not authorized and permitted to take timely rest periods
6 for every four hours worked, or major fraction thereof; and
- 7 (c) Class members were required to remain on-duty during and under
8 Defendants' control during rest periods or otherwise had their rest periods
9 interrupted by work demands.

10 31. From at least four years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above described off the clock work and
13 on-duty work while on unpaid meal breaks and by Defendants' policy and practice of editing
14 records or requiring Plaintiff and the Class members to create time punch records that did not
15 reflect their actual hours worked. By not compensating Employees for all hours worked,
16 Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in
17 violation of Labor Code § 221.

18 32. As a result of the above described illegal policies and practices, Defendants engaged
19 in and enforced the following additional unlawful practices and policies against Plaintiff and the
20 Class members he seeks to represent:

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

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

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

6 33. As a matter of policy at all California locations, Defendant also failed to provide
7 suitable seating to California employees. Instead, Defendant prohibited Class Members from
8 utilizing seating to perform their work duties in various departments where they could perform
9 their work duties while seated. For most Class members, their job duties could be performed while
10 seated. Plaintiff and Class Member job duties uniformly permitted them to sit down, and a seat
11 would not have interfered with their job performance.

12 34. From at least four years prior to the filing of this lawsuit, and continuing to the
13 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
14 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
15 the above-described requirement of off the clock work, unlawful rounding, failure to pay all
16 overtime or pay it at the correct rate, and failure to pay premium wages for unprovided or
17 otherwise unlawful meal and rest breaks. Defendants have also made it difficult to record with
18 precision for the unlawfully withheld wages and meal and rest period compensation owed to
19 Plaintiff and the Class, during the liability period, because they did not implement and preserve a
20 record-keeping method as required for non-exempt employees by California Labor Code §§ 226,
21 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief,
22 time clock punches were not maintained or were not accurately maintained for work shifts and
23 meal periods, which were automatically presumed by Defendants to have been lawfully provided
24 when they were not. Defendants also failed to accurately record and pay for all regular and
25 overtime hours worked and commissions earned by Plaintiff and the Class members. Plaintiff was
26 not provided with the opportunity to review his timekeeping records for accuracy and to ensure
27 that he was being paid correctly. Upon information and belief, the other similarly situated Class
28 members endured similar violations at Defendants' hands.

1 35. Defendants have thus also failed to comply with Labor Code § 226(a) by failing to
2 issue any wage statements and by issuing wage statements that inaccurately reported total hours
3 worked and total wages earned by Plaintiff and the Class members, along with the appropriate
4 applicable rates, among other requirements. Plaintiff and Class members are therefore entitled to
5 penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants
6 have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by
7 failing to maintain time records showing when the employee begins and ends each work period,
8 meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by
9 itemizing in wage statements all deductions from payment of wages and accurately reporting total
10 hours worked by the Class members. Upon information and belief, Defendants also failed to
11 provide Employees such as Plaintiff with written notice complying with all the requirements of
12 Labor Code § 2810.5.

13 36. Defendants also required Plaintiff and the Class members to work hours off the
14 clock for which they were not compensated, including unlawfully rounded time and during
15 interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime
16 premium wages owed for work conducted on a work shift and a workday, as addressed above.
17 Therefore, from at least four years prior to filing this lawsuit and continuing to the present,
18 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
19 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
20 two hours of their resignation, as required by California wage-and-hour laws, including Labor
21 Code § 203. In view of the above addressed violations, Defendants have also failed to pay all
22 wages owed to Plaintiff and the Class members twice monthly in accordance with the
23 requirements of Labor Code § 204.

24 37. Additionally, from at least four years prior to the filing of this lawsuit and
25 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
26 incur necessary business expenses in the course of performing their required job duties without
27 reimbursement. These included the use of Plaintiff's personal mobile telephones to respond to
28 customers and supervisors in the course of performing his job duties. Upon information and

1 belief, Defendants also failed to pay for similar necessary business expenses incurred by Class
2 members. Plaintiff and the Class members must be reimbursed for these necessary business
3 expenses under Labor Code § 2802 and Defendants systematically failed to do so.

4 38. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
5 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
6 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et. seq.*, and California Code of
7 Regulations, Title 8, section 11000 *et seq.* and applicable provisions of the IWC Wage Orders.

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

12 **CLASS ALLEGATIONS**

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

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

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

27 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
28 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-

1 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

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

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

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

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

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

21 j. Subclass 10. Suitable Seating Class. All Class members who were subject to
22 Defendants' policy and/or practice of failing to provide suitable and adequate seating as provided
23 by California law.

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

27 41. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
28 modify the class description with greater particularity or to provide further division into subclasses

1 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
2 against Defendants, the Class Period should be adjusted accordingly.

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

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

17 **A. Numerosity**

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

24 **B. Commonality**

25 45. There are questions of law and fact common to the Class that predominate over any
26 questions affecting only individual Class members. The common questions are numerous and
27 substantial and flow from Defendants’ uniform policies and/or practices of violating the California
28 Labor Code addressed above. As such, these common questions predominate over individual

1 questions concerning each individual Class Member's showing as to his or her eligibility for
2 recovery or as to the amount of damages. These common questions of law and fact include:

- 3 a. Whether Defendants failed to pay Employees minimum wages;
- 4 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 5 c. Whether Defendants failed to pay Employees overtime as required under Labor
6 Code § 510;
- 7 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
8 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
9 premium pay in lieu thereof;
- 10 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
11 Orders, by failing to authorize and permit Employees to take requisite rest breaks
12 or provide premium pay in lieu thereof;
- 13 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
14 inaccurate wage statements;
- 15 g. Whether Defendants violated Labor Code § 221;
- 16 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
17 wages and compensation due and owing at the time of termination of employment;
- 18 i. Whether Defendants' conduct was willful;
- 19 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
20 Orders by failing to maintain accurate records of Class members' earned wages and
21 work periods;
- 22 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
23 Employees during the relevant time period for all hours worked, whether regular or
24 overtime;
- 25 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
26 wages earned at least twice monthly;
- 27 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 28 n. Whether the nature of Plaintiffs' and Class Members' job duties reasonably permit

the use of seating;

o. Whether Defendant unlawfully and/or willfully deprived Plaintiffs and Class Members of suitable seating when the nature of their job duties reasonably permitted it;

p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

q. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees.

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

49. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class

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

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

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

24 52. Plaintiff and the Employees in the Class did not discover the fact that they were
25 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
26 any discussion about Plaintiff's and the Class's waiver of their Constitutional rights of trial by
27 jury, to collectively organize and oppose unlawful pay practices under California law as well as
28 obtain injunctive relief preventing such practices from continuing. As a result, the applicable

1 statutes of limitation tolled until such time as Plaintiff and the Class members discovered their
2 claims.

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

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

8 54. Defendants failed to pay Employees minimum wages they were owed, including
9 by their consistent policy of failing to pay Employees for all hours worked. Employees would
10 work hours and not receive wages, including as alleged above in connection with off the clock
11 work, including all the time required to remain on duty and under Defendants' control and during
12 breaks and due to the work demands placed upon them by Defendants' management, and due to
13 the failure to pay all commissions and bonuses and non-productive and rest break time and
14 regular rate miscalculation, all addressed in detail above. Defendants, and each of them, have
15 also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours,
16 or required Employees to do so, and imposed difficult to attain job and shift scheduling
17 requirements on Plaintiff and the Class members, which resulted in off the clock work and
18 underpayment of all wages owed to Employees over a period of time, while benefiting
19 Defendants. Defendants' uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the Class as a whole, as a result of implementing a uniform
21 policy and practice that denied accurate compensation to Plaintiff and the other members of the
22 Class as to minimum wage pay.

23 55. In California, employees must be paid at least the then applicable state minimum
24 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
25 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
26 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to

1 California Labor Code § 204, other applicable laws and regulations, and public policy, an
2 employer must timely pay its employees for all hours worked. Defendants failed to do so.

3 56. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
4 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
5 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

6 57. The applicable minimum wage rate fixed by the commission for work during the
7 relevant period is found in the Wage Orders.

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

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

20 60. In committing these violations of the California Labor Code, Defendants
21 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
22 reflect their actual hours worked, or calculated the correct time worked and consequently
23 underpaid the actual time worked by Plaintiff and other members of the Class, including by
24 requiring off the clock work, as addressed in detail above. Defendants acted in an illegal attempt to
25 avoid the payment of all earned wages, and other benefits in violation of the California Labor
26 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
27 As a result of these violations, Defendants also failed to timely pay all wages earned in California
28 accordance with California Labor Code § 1194.

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

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

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

12 64. Also, California Labor Code §1198 instructs that: states, “the maximum hours of
13 work and the standard conditions of labor fixed by the commission shall be the maximum hours of
14 work and the standard conditions of labor for employees. The employment of any employee for
15 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
16 unlawful.” Paragraph 4 of the applicable IWC Wage Orders require the payment of minimum
17 wages for all hours worked, and that all wages earned in a pay period be paid during that period.
18 Defendants’ policies and practices violated these IWC Wage Order requirements. Under Section
19 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class members are entitled to recover
20 civil penalties, in addition to other penalties, for each underpaid Employee for violation of Section
21 4 of the IWC Wage Orders in the amount of \$50 for the initial violation and \$100 for subsequent
22 violations during each relevant pay period when Defendants failed wages for all hours worked.
23 These violations also give rise to violations of Labor Code §§ 203 and 226.

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

27 66. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
28 unpaid minimum wages (including double minimum wages) and local wage ordinance wages and

1 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon
2 and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).
3 Plaintiff and the other members of the Class further request recovery of all unpaid wages,
4 according to proof, interest, statutory costs, as well as the assessment of any statutory and/or civil
5 penalties against Defendants, in a sum as provided by the California Labor Code, including § 558,
6 and/or other applicable statutes. To the extent minimum wage compensation is determined to be
7 owed to the Class members who have terminated their employment, Defendants' conduct also
8 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
9 waiting time penalties under California Labor Code § 203, which penalties are sought herein on
10 behalf of these Class members. Defendants' failure to timely pay all wages owed also violated
11 Labor Code § 204 for failure to pay all wages owed twice monthly and resulted in violations of
12 Labor Code § 226 because they resulted in the issuance of inaccurate wage statements.
13 Defendants' conduct as alleged herein was willful, intentional, and not in good faith. Further,
14 Plaintiff and other Class members are entitled to seek and recover statutory costs.

15 **SECOND CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 68. California Labor Code § 1194 provides that "any employee receiving less than the
21 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
22 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
23 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
24 may be maintained directly against the employer in an employee's name without first filing a
25 claim with the Division of Labor Standards and Enforcement.

26 69. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
27 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
28 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:

1 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
2 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
3 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
4 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
5 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
6 wages for all hours worked, including by requiring off the clock work and unlawful rounding as
7 addressed above and by under-reporting actual hours worked. With work shifts generally being
8 scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the
9 Class members working past eight hours on a shift, which required that they be paid at the correct
10 overtime rate of 1.5 times their regular rate.

11 70. Defendants thus had a consistent policy of not paying Employees wages for all
12 hours worked, including hours at their required regular, overtime, and double-time rates.
13 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
14 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
15 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
16 Class members all earned and owed straight time and overtime wages and other benefits, in
17 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
18 Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

19 71. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
20 regular wages owed and overtime compensation for all hours worked, as required by California
21 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
22 IWC Wage Order, and is therefore unlawful.

23 72. Additionally, Labor Code § 558(a) provides "any employer or other person acting
24 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
26 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid in addition to an amount sufficient to recover
28 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each

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

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

14 74. Employees have been damaged by these violations of California Labor Code §§
15 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
16 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
17 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
18 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
19 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
20 any order or ruling of the commission.”

21 75. Consequently, pursuant to the California Labor Code, including Labor Code §§
22 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
23 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
24 amount of all their unpaid wages and overtime compensation for all their hours worked, with
25 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
26 penalties against Defendants, and each of them, and any additional sums as provided by the
27 Labor Code and/or other statutes.

28

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

23 80. Moreover, Defendants failed to compensate Employees for each meal period not
24 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
25 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
26 employee a meal period in accordance with this section, the employer shall pay the employee one
27 hour of pay at the employee's regular rate of compensation for each workday that the meal period
28 is not provided. Defendants failed to compensate the Employees in the Class for each meal period

1 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
2 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any meal period
3 premium, upon information and belief they failed to include all forms of remuneration, including
4 bonuses, in the regular rate used to calculate and pay the premium.

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

11 **FOURTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

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

19 84. Employees consistently worked consecutive four hour shifts and were generally
20 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
21 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
22 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
23 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
24 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
25 required to work or to otherwise remain under Defendants' control during rest periods, and had
26 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
27 Class members were also not permitted to leave their work premises during rest breaks.

85. 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.

86. 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.

87. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any rest break premium, upon information and belief they failed to include all forms of remuneration, including bonuses, in the regular rate used to calculate and pay the premium.

88. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employee Class members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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

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

90. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these

1 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
2 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
3 statements may be given to the employee separately from the payment of wages; in either case the
4 employer must give the employee these statements twice a month or each time wages are paid.

5 91. Defendants also failed to provide Plaintiff and the similarly situated Employee
6 Class members with accurate itemized wage statements in writing, as required by the Labor Code
7 and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
8 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
9 including by failing to pay for all hours worked and due to unlawful rounding, failure to pay for all
10 overtime hours worked at the correct rate of pay and for providing deficient meal periods and rest
11 breaks, all of which Defendants knew or reasonably should have known were owed to the
12 Employees, as alleged above.

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

25 93. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
26 and intentional failure to provide them with the wage and hour statements as required by law and
27 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
28 Defendants have failed to provide an accurate wage statement, failed to provide accurate and

1 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
2 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
3 wage statement alone one or more of the following: (i) The amount of the gross wages or net
4 wages paid to the employee during the pay period or any of the other information required to be
5 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
6 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
7 wages paid to the employee during the pay period, (iii) The name and address of the employer
8 and, (iv) The name of the employee and only the last four digits of his or her social security
9 number or an employee identification number other than a social security number. For purposes
10 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
11 objective standard] would be able to readily ascertain the information without reference to other
12 documents or information.

13 94. 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 95. 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 96. 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), and are entitled to
4 recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders.
5 They are also entitled to an award of costs and reasonable attorneys' fees.

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

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

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

16 99. Defendants unlawfully received and/or collected wages from the Employees in the
17 Class by implementing a policy understating the hours worked by Employees, by requiring off the
18 clock work and unlawful rounding and by failing to pay overtime and premiums at the required
19 and correctly calculated regular rate, and by automatically deducting time for meal periods when
20 they were not lawfully provided, as alleged above.

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

23 **SEVENTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 204**
25 **(Against All Defendants)**

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

1 102. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
4 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
5 during which the labor was performed, and labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
7 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.” As detailed above, Defendants
10 maintained a consistently applied policy and practice of not paying all wages earned between the
11 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
12 between the 16th and the last day of the month between the 1st and 10th day of the following month.
13 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
14 hours they worked and failing to pay all wages earned by not more than seven calendar days
15 following the close of the payroll period.

16 103. All wages due and owing to Plaintiff and the Class members, including as required
17 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
18 required by Labor Code § 1194 and other sections became due and payable to each employee in
19 each pay period that he or he was not provided with a meal period or rest period or paid straight or
20 overtime wages to which he was entitled. Additionally, the wage statements issued by Defendants
21 failed to list all hours worked at the applicable rates and undercompensated Plaintiff and the Class
22 members, thus giving rise to further failure to timely pay wages violations.

23 104. Defendants violated Labor Code § 204 by systematically refusing to timely pay
24 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
25 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
26 payday for the period involved, not less than the applicable minimum wage for all hours worked in
27 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is

1 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
2 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
3 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

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

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

14 107. Plaintiff and numerous Class members are no longer employed by Defendants; they
15 either quit Defendants’ employ or were fired therefrom.

16 108. Defendants failed to pay these Employees all wages due and certain at the time of
17 termination or within seventy-two hours of resignation, as addressed in detail above.

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

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

28

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

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

NINTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

115. During the course of Plaintiff’s and Employees’ employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and

premium pay as discussed above and failing to document and pay for actual hours worked.

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

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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING LAB. CODE § 1198; 8 C.C.R. § 11070(7)

(Against All Defendants)

120. Plaintiffs incorporate by reference every allegation in this complaint as if fully set forth herein.

121. Labor Code Section 1198 provides that it is illegal to employ an employee for "longer hours than those fixed by the [applicable wage order] or under conditions of labor prohibited by the [applicable wage] order."

122. The applicable Wage Order provides that "[a]ll working employees *shall* be provided with suitable seats when the nature of the work reasonably permits the use of seats." *Id.* § 11070(14)(A) (emphasis added). Further, "[w]hen the employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats *shall* be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties." *Id.* § 11070(14)(B) (emphasis added).

123. Defendants' policy prohibiting employees from sitting and not providing them with suitable seating while performing their required job duties violates the applicable Wage Order.

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

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

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

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

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

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

1 comply with minimum labor standards.

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

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

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

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

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

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

1 **TWELFTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

17 138. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
18 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
19 including the penalty provisions, without limitation, based, inter alia, on the following California
20 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
21 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

22 139. More specifically, after complying with the notice procedures of Labor Code §
23 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
24 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-
25 addressed underlying claims and seeking penalties as specified by the applicable corresponding
26 provisions, including as follows:

27 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
28 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime

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

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

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

27 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
28 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,

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

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

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Provide Suitable Seating: For the above addressed violations of paragraph 14 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and the civil and statutory penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

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

1 Labor Code § 2699(g)(1).

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

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

20 141. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
21 the LWDA and Defendants on April 18, 2024 (LWDA-CM-1023229-24) addressing in detail the
22 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
23 theories to support the alleged violations and requested penalties. The LWDA has not provided
24 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
25 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
26 addressed herein and in the PAGA Notice letter and the original Complaint.

27 **RELIEF REQUESTED**

28 WHEREFORE, Plaintiff prays for the following relief:

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

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

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

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

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

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

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

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

16 11. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

19 13. For penalties under Labor Code § 558, as may be proven;

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

23 ///

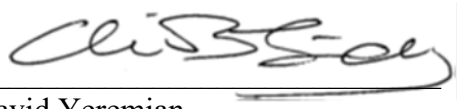
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15. For other wages and penalties under the Labor Code as may be proven;
16. For all general, special, and incidental damages as may be proven;
17. For an award of pre-judgment and post-judgment interest;
18. For an award providing for the payment of the costs of this suit;
19. For an award of attorneys' fees; and
20. For such other and further relief as this Court may deem proper and just.

DATED: June 25, 2024

D.LAW, INC.

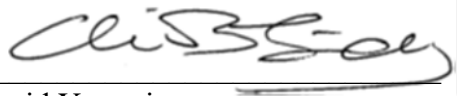
By 
David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Scott Vincent Bradley
and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: June 25, 2024

D.LAW, INC.

By 
David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Scott Vincent Bradley
and all others similarly situated

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

On June 25, 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:

Philip Ewen
p.ewen@musicckpeeler.com
 Citadelle B. Priagula
c.priagula@musicckpeeler.com
MUSICK, PEELER & GARRETT, LLP
 333 S. Hope Street, Ste. 2900
 Los Angeles, CA 90071

[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 TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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

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

Executed on June 25, 2024, at Glendale, California.

Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Spring Street Courthouse Mailing Address: 312 North Spring Street City, State and Zip Code: Los Angeles CA 90012	
SHORT TITLE: SCOTT VINCENT BRADLEY vs AVMC, LLC NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 24STCV09858

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 10062315_2024_06_25_10_18_46_739_0
 Submission Number: 24LA01076265
 Court Received Date: 06/25/2024
 Court Received Time: 10:23 am
 Case Number: 24STCV09858
 Case Title: SCOTT VINCENT BRADLEY vs AVMC, LLC
 Location: Spring Street Courthouse
 Case Type: Civil Unlimited
 Case Category: Other Employment Complaint Case
 Jurisdictional Amount: Over \$35,000
 Notice Generated Date: 06/25/2024
 Notice Generated Time: 10:57 am

Documents Electronically Filed/Received

Status

Amended Complaint	Accepted
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Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859