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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 6/20/2024 5:23 PM
Reviewed By: R. Walker
Case #24CV435308
Envelope: 15705428**

Attorneys for Plaintiff WAYNE HERBERT CHARLES, on behalf
of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

WAYNE HERBERT CHARLES, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

ADVANCED CHEMICAL TRANSPORT
LLC dba ACTENVIRO, a California limited
liability company; IQ PERSONNEL, INC., a
California stock corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 24CV435308

CLASS ACTION

Assigned for All Purposes To:
Hon. Charles F. Adams
Dept.: 7

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
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 15, 2024
Trial Date: None Set

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

5 INTRODUCTION

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

16 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
17 Defendants in positions generally pertaining to providing environmental management and
18 hazardous waste management services to Defendants’ customers. Plaintiff, and upon information
19 and belief the other similarly situated Employees in the Class, were required to perform work
20 tasks based out of Defendants’ chemical labs, facilities, and locations in California. Plaintiff has
21 been employed by Defendants as a technician and chemical disposal person, and Defendants
22 tasked him with duties that included processing and consolidating various chemicals, including
23 bio-hazardous materials.

24 3. Defendants employed other similarly situated Employees in similar and related
25 positions based out of Defendants’ chemical labs and facilities throughout California, including
26 upon information and belief in the cities of San Jose, Redlands, Escondido, and Sacramento.
27 Plaintiff and the other similarly situated Class Members worked at Defendants’ behest without
28 being paid all wages due and without being provided all required breaks. More specifically,

1 Plaintiff and the other similarly situated Class Members were employed by Defendants and shared
2 similar job duties and responsibilities, were subjected to the same policies and practices, and
3 endured similar violations at Defendants' hands.

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

13 5. Defendant ADVANCED CHEMICAL TRANSPORT LLC dba ACTenviro, is a
14 California limited liability company that lists its principal address in Phoenix, Arizona, and does
15 not list a California office with the California Secretary of State. It lists several registered
16 corporate agents who list addresses in Glendale, California, and Los Angeles County. Advanced
17 Chemical Transport LLC ("Advanced Chemical") lists its type of business as "non-hazardous
18 solid waste management ." The wage statements issued to Plaintiff by Defendants lists "Advanced
19 Chemical Transport LLC" as his employer with an address in San Jose, California, which differs
20 from the principal Arizona address listed with the California Secretary of State. Defendants'
21 failure to accurately list the employer and its address on the wage statements issued to Plaintiff
22 and the Class Members is evidence of Defendant's systematic and ongoing facial violation of
23 Labor Code § 226(a)(8). Upon information and belief, Advanced Chemical Transport LLC does
24 business as ACTenviro. ACTenviro's website explains that: "ACTenviro is a nationally
25 recognized environmental and hazardous waste management firm, offering comprehensive,
26 compliant, and customizable turn-key services throughout the U.S. & Canada."

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1 6. Defendant IQ PERSONNEL, INC. is a California corporation that lists its principal
2 and California office address in Whittier, California with the California Secretary of State and lists
3 its type of business as "Employment Agency." Upon information and belief IQ Personnel, Inc. is a
4 temporary staffing company that places and jointly employs workers at Advanced Chemical's
5 locations, including Plaintiff at the outset of his employment by Defendants until he became a
6 direct hire of Advanced Chemical.

7 7. Therefore, under California Labor Code § 2810.3, Advanced Chemical shares with
8 IQ Personnel, Inc., and any other staffing agency it uses, in civil legal responsibility for all
9 workers supplied to Advanced Chemical for their collective failure to pay all earned wages.
10 California Labor Code § 2810.3 requires that "A client employer shall share with a labor
11 contractor all civil legal responsibility and civil liability for all workers supplied by that labor
12 contractor for...the payment of wages." A "labor contractor" (here, IQ Personnel, Inc.), is defined
13 as "an individual or entity that supplies, either with or without a contract, a client employer with
14 workers to perform labor within the client employer's usual course of business." "Client
15 employer" (here Advanced Chemical) is defined as "a business entity, regardless of its form, that
16 obtains or is provided workers to perform labor within its usual course of business from a labor
17 contractor." Upon information and belief, Defendant Advanced Chemical is and has been a client
18 employer within the definition of Labor Code § 2810.3 and shares with IQ Personnel, Inc., the
19 labor contractor, all civil legal responsibility and civil liability for failure to pay all wages earned
20 by Plaintiff and the Class Members.

21 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
23 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
24 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
25 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
26 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Santa Clara County
27 and Defendants have not listed a principal California address. Defendants also employ Class
28 Members at chemical labs, facilities, and locations in Santa Clara County and throughout

1 California.

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

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

21 **FACTUAL BACKGROUND**

22 11. The Employees who comprise the Class, including Plaintiff, are non-exempt
23 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission
24 ("IWC"). During the period of four years prior to the filing of this action through its resolution,
25 the Employee Class Members were employed by Defendants and worked in non-exempt
26 positions at the direction of Defendants in the State of California. Plaintiff and the Class
27 Members were either not paid by Defendants for all hours worked or were not paid at the
28 appropriate minimum, regular, and overtime rates. Plaintiff also contends that Defendants failed

1 to pay Plaintiff and the Class Members all wages due and owing, including compensation for off-
2 the-clock work, uncompliant meal and rest breaks, and Defendants' failure to furnish accurate
3 wage statements, all in violation of various provisions of the California Labor Code and
4 applicable paragraphs of the IWC Wage Orders.

5 12. During the course of Plaintiff and the Class Members' employment with
6 Defendants, they were not paid all wages they were owed, including for all work performed
7 (resulting in "off the clock" work) and for all their overtime hours worked, and they were not
8 paid at the required rates for overtime. This has resulted in systematic and ongoing violations of
9 the California Labor Code and relevant IWC Wage Orders. Upon information and belief,
10 Defendants employ other non-exempt, hourly employees as technicians, chemical disposal
11 persons, and in similar and related positions based out of their chemical labs, facilities, and
12 locations in California.

13 13. Plaintiff has been generally scheduled to work five days per week for eight to
14 fifteen hours per shift, with shift times generally spanning from 4:30 a.m. through 2:30 p.m. or
15 6:00 a.m. through 2:30 p.m. On many occasions, Defendants required Plaintiff to work longer
16 shifts with an additional hour or two of time approved by Defendants to be paid at overtime
17 premium rates. However, Defendants have required Plaintiff to endure substantial off-the-clock
18 work before and after his scheduled shift hours.

19 14. Defendants' policy and practice of requiring systematic off-the-clock work flowed
20 in part from their unlawful timekeeping procedures. Defendants required that Plaintiff and Class
21 Members clock in and out using the ADP application on their personal cell phones and further
22 required that Plaintiff and Class Members record their hours worked on a time sheet. While
23 Defendants required time punch records for shift start and end times and meal period beginning
24 and end times, they were not recorded contemporaneously with Plaintiff's actual hours worked.

25 15. In particular, up until March 16, 2024, Defendant's timekeeping systems failed to
26 account for Plaintiff's and Class Members' travel time spent driving to designated work
27 locations. Plaintiff's home location was in Sacramento, California. However, Defendants
28 regularly required Plaintiff to work at its San Francisco location which was about two hours away

1 from Plaintiff's home location. Plaintiff was not compensated for this commute time as Plaintiff's
2 supervisor instructed Plaintiff to clock in upon arriving at the work location and clock out after
3 the job was completed and before heading back. Plaintiff estimates that he worked approximately
4 2-4 hours off the clock in travel time per day when commuting to Defendant's other work
5 locations, and Defendants also failed to reimburse or otherwise pay Plaintiff for mileage for the
6 drive or other wear and tear incurred in traveling at Defendants' behest and instruction.

7 16. Additionally, Defendants instructed Plaintiff and the Class Members to input into
8 the timekeeping system that they took a meal period and did so before the fifth hour of work as
9 required under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Class
10 Members to thus record compliant meal breaks without regard to whether they were actually
11 taken on time or for the full duration or were interrupted by customer demands and other work
12 requirements. When Plaintiff and Class Members were unable to clock out for a meal period
13 before the fifth hour of work or were unable to take a meal period for the full thirty-minute
14 duration, Plaintiff's supervisors would modify and adjust the time entries to reflect that a lawful
15 meal period was taken. Plaintiff's supervisors would also modify time clocks to reflect that
16 Plaintiff took a second meal period when Plaintiff was scheduled to work more than ten hours a
17 day even though Defendants failed to provide Plaintiff with a second meal period throughout
18 Plaintiff's entire employment with Defendants.

19 17. Additionally, by deducting 30 minutes for a meal period plus an additional 30
20 minutes for an alleged second meal period that was generally not lawfully provided if at all,
21 Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each
22 Employee's daily work shifts. Managers would modify and adjust any timekeeping entries
23 recorded for meal periods that were non-compliant to reflect they were timely or not shortened to
24 avoid incurring and paying meal period premium penalty wages.

25 18. Defendants' managers also contacted Plaintiff by calling his personal cell phone
26 regarding work-related matters, and would do so both throughout the work day and during breaks
27 and also after work hours. Plaintiff was also often required to work off the clock after clocking
28 out for a meal period as he felt compelled by his supervisors not to record that he was clocked out

1 but to continue working. Additionally, because Plaintiff frequently took his meal periods in front
2 of Defendant's customers, Plaintiff's meal periods were frequently interrupted by customer
3 demands and requirements. Defendant's timekeeping policies and procedures failed to account
4 for this off the clock work.

5 19. Defendants also required Plaintiff to remain on call about three times per week in
6 the event that Defendants' operations required Employees to work additional shifts. Plaintiff's
7 paystubs provided by Defendant fail to show any stand by time or on-call shift pay for this time
8 he spent under Defendants' control. Additionally, to whatever extent Defendants paid Plaintiff
9 and the Class Members performance-based bonuses and any other form of remuneration, such as
10 shift differentials and the like, Defendants failed to include it in the regular rate used to calculate
11 and pay the overtime that Defendants did pay.

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

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

27 22. The failure to pay for all hours worked and underpayment of wages to Plaintiff
28 and the Class Members is and has been a direct consequence of Defendants' unlawful

1 compensation policies and practices, which upon information and belief applied uniformly to the
2 Class Members working based out of Defendants' labs, facilities, and locations throughout
3 California. As a result of the above-described unlawful requirements to work off the clock, the
4 failure to accurately record all hours worked and pay wages at the correct rates, and the other
5 wage violations they endured at Defendants' hands, Plaintiff and the Class Members were not
6 properly paid all wages earned and all wages owed to them by Defendants, including when
7 working more than eight hours in any given day and/or more than forty hours in any given week.

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

16 24. Defendants also failed to provide Plaintiff and the Class Members with their
17 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
18 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to
19 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
20 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
21 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
22 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
23 IWC Wage Order(s).

24 25. More specifically, Plaintiff worked shifts that entitled him to at least one meal
25 period, but as addressed above, Defendants' managers required Plaintiff and the Class Members to
26 clock out for thirty minutes before the fifth hour of work to have their time records reflect that
27 meal periods were lawful and would deduct that time from hours worked for the shift. To
28 whatever extent there was ever a schedule for meal periods, it went by the wayside quickly as

1 there always seemed to be a work task to respond to or a customer issue to attend to, especially as
2 Plaintiff was regularly required to take his meals in front of customers. This led to systematically
3 late meal periods, if they were provided at all, and on-duty meal periods that were incessantly
4 interrupted by customer and management demands, required job duties, and tasks to be performed.
5 Management expectations also contributed to Employees working through meal periods or not
6 taking them or taking them late so work could be accomplished. Plaintiff also estimates that at
7 least 2-3 times per month, Plaintiff would clock out for lunch and continue working throughout his
8 meal period due to lack of relief of workers.

9 26. Additionally, Defendants instructed Plaintiff and the Class Members to input into
10 the timekeeping system that they took thirty a meal period and did so before the fifth hour of work
11 as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Class
12 Members to thus record compliant meal breaks without regard to whether they were actually taken
13 on time or for the full duration or were interrupted by customer and management demands and
14 other work requirements. Plaintiff recalls generally that most meal period he was ever able to take
15 rarely ever consisted actual duty-free break time as his meal periods were generally interrupted by
16 customer and manager demands. Despite this fact, Defendants automatically deducted meal period
17 on each work shift without regard to whether it was actually taken or was otherwise unlawful.

18 27. Defendants' also failed to provide Plaintiff with second meal periods when Plaintiff
19 worked shifts over ten hours a day. In fact, Plaintiff cannot recall a single time throughout his
20 employment with Defendant where he took a second meal period, despite regularly being
21 scheduled to work over ten hours a day. Despite this, Plaintiff's supervisors would modify
22 Plaintiff's time sheets to reflect that Plaintiff took a second 30-minute meal period before the tenth
23 hour of work, and then also unlawfully deducted 30 minutes from Plaintiff's hours worked.

24 28. Therefore, meal period violations systematically occurred throughout all of
25 Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
26 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
27 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
28 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour

1 premium payment. Upon information and belief, the other Class Members were subjected to
2 similar unlawful policies and practices and endured similar violations as Plaintiff.

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

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

18 31. Defendants thus followed uniformly applied policies of not providing all required
19 meal periods to their Employees. Meal periods were often not properly provided, as customer and
20 work demands impermissibly shortened their breaks. Even when Plaintiff and the Class Members
21 were able to take a meal period, it was generally interrupted by work duties or was taken after the
22 fifth hour of work. Additionally, as addressed above, Defendants followed a practice of requiring
23 off-the-clock work in a manner that would impact when Employees were to receive meal periods
24 and rest breaks, thus leading to further violations.

25 32. As a result, Defendants' failure to provide Plaintiff and the Class Members with all
26 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
27 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
28 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at

1 each Employee's effective regular hourly rate of compensation for each meal period or rest break
2 that Defendants failed to provide or deficiently provided.

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

- 10 (a) Class Members were not provided full thirty-minute duty free meal periods
11 for work days in excess of five hours and were not compensated one hour's
12 wages in lieu thereof, or were not compensated at the correct regular rate
13 of compensation, all in violation of, among others, Labor Code §§ 226.7,
14 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 15 (b) Class Members were not provided second full thirty-minute duty free meal
16 periods for work days in excess of ten hours;
- 17 (c) Class Members were required to work through at least part of their daily
18 meal period(s);
- 19 (d) Meal periods were provided after five hours of continuous work during a
20 shift; and
- 21 (e) Class Members were restricted in their ability to take a full thirty-minute
22 meal period.

23 34. Similar violations resulted from Defendants' failure to authorize and permit
24 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
25 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members
26 were either not authorized permitted the opportunity to take a rest break, or were required to
27 remain under Defendants' control and respond to calls and instructions from management and job
28 and customer demands if and when they even attempted to take one. Upon information and belief,

1 Defendants thus also failed to authorize and permit employees to leave the premises during rest
2 breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members
3 to remain under their control during required off-duty rest break times.

4 35. Rest breaks were neither scheduled nor contemplated by Defendants. During
5 Plaintiff's entire employment duration with Defendants, he cannot recall a time when he took a
6 break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten
7 minute rest breaks during each of his work shifts. As detailed above, in addition to failing to
8 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal
9 periods that were rarely provided or otherwise received without violation. In so doing, it was also
10 as if Defendants combined meal periods with rest breaks and deducted the time for all from hours
11 worked. This practice again unlawfully failed to pay Employees for rest break time, which must
12 be compensated at the regular rate.

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

20 37. During rest periods, employers must relieve employees of all duties and relinquish
21 control over how employees spend their time. Plaintiff and the Class Members were and are
22 under Defendants' control when they are working through rest breaks and remaining under
23 Defendants' control. Defendants have also provided either impermissibly shortened or untimely
24 meal and rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class
25 were thus not authorized and permitted to take lawful rest periods, were systematically required
26 by Defendants to work through or during breaks, and were not provided with one hour's wages in
27 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus
28 making them either untimely or shortened and on-duty, and they were also prevented from

1 leaving the premises and otherwise remain under Defendants' control during rest breaks under
2 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in
3 one or more of the following manners:

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

13 38. From at least four years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
15 deducting the Employees' earned wages, including by the above-described off-the-clock work and
16 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
17 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely
18 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
19 plus an additional 30 minutes for an alleged second meal period that was generally not provided at
20 all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each
21 Employee's daily work shifts. Defendants' managers would also move Plaintiffs' clock in times to
22 later ones as much as needed to offset any unapproved overtime or to make a late meal period
23 timely. By not compensating Employees for all hours worked, Defendants unlawfully deducted
24 wages earned in violation of Labor Code § 221.

25 39. Defendants also violated California Labor Code § 246 by not providing all
26 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an
27 Employee who "works in California for the same employer for 30 or more days within a year
28 from the commencement of employment is entitled to paid sick days as specified in this section."

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

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

27 41. As a result of these illegal policies and practices, Defendants also engaged in and
28 enforced the following additional unlawful practices and policies against Plaintiff and the Class

Members he seeks to represent:

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

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

1 Plaintiff and the Class Members, including by failing to pay all overtime hours at the correctly
2 calculated overtime premium rate. As also detailed above, Defendants failed to accurately list the
3 employer and address on wage statements issued to Plaintiff in violation of section 226(a)(8).

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

15 44. Defendants also required Plaintiff and the Class Members to work hours off the
16 clock for which they were not compensated. They were required to endure off-the-clock work
17 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
18 provided with sick pay and supplemental sick leave and were subjected to systematic off-the-clock
19 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
20 work shift and a work day or failed to pay it at the correct rate, as addressed above. Therefore,
21 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
22 Employees in the Class at the time of their termination or within seventy-two hours of their
23 resignation, as required by California wage-and-hour laws. Additionally, upon information and
24 belief, Defendant Advanced Chemical is and has been a client employer within the definition of
25 Labor Code § 2810.3. Therefore, IQ Personnel, Inc., the labor contractor, must share all civil legal
26 responsibility and civil liability for the payment of all wages earned by Plaintiff and the Class
27 Members with Advanced Chemical.

28 45. Additionally, from at least four years prior to the filing of this lawsuit and

1 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
2 incur necessary business expenses in the course of performing their required job duties without
3 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
4 calls from managers to discuss work-related matters and tasks, as well as tools and equipment that
5 Plaintiff incurred in order to conduct his job duties, such as chemical-resistant boots, a respirator,
6 and glasses. Plaintiff was also required to drive to Defendants other locations during work shift
7 hours but Defendants neglected to reimburse him for mileage or related automobile expenses and
8 usage. Plaintiff and the Class Members must be reimbursed for these necessary business expenses
9 under Labor Code § 2802 and Defendants systematically failed to do so.

10 46. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
11 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
12 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
13 1194.2 1197, 1198, 1198.5, 1199, and 2802, 2698 *et seq.*, and California Code of Regulations,
14 Title 8, section 11000 *et seq.*

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

19 **CLASS ALLEGATIONS**

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

28 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not

1 compensated for all hours worked for Defendants at the applicable minimum wage.

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

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

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

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

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

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

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

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

27 j. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
28 necessary and reasonable expenses in connection with performing their job duties for Defendants

1 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

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

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

23 **A. Numerosity**

24 52. The potential members of the class as defined are so numerous that joinder of all
25 the member of the class is impracticable. While the precise number of Class Member has not been
26 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
27 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
28 the Class definition within the State of California. Plaintiff alleges that Defendants' employment

records will provide information as to the number and location of all Class Members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the

IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;

- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and
- q. Whether IQ Personnel Inc. should share with Advanced Chemical responsibility for all workers placed at Advanced Chemical's California facilities and offices under California Labor Code § 2810.3.

C. Typicality

54. 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

55. 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

56. A class action is superior to other available means for the fair and efficient

1 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
2 questions of law and fact common to all Employees predominate over any questions affecting only
3 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
4 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

23 59. Defendants, as prospective and actual employers of the Employees in the Class,
24 had a special fiduciary duty to disclose to prospective Class Members the true facts surrounding
25 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
26 Employees as well as the effect of any alleged arbitration agreements that may have been forced
27 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
28 and policies, most notably intentionally refusing to pay for all hours actually worked which should

have been recorded in Defendants' pay records and the consequence of the alleged arbitration agreements and policies and practices on the Employees and Class as a whole.

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

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

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

1 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
2 wage pay.

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

8 64. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
9 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
10 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
11 applicable minimum wage rate fixed by the commission for work during the relevant period is
12 found in the Wage Orders.

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

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

25 67. In committing these violations of the California Labor Code, Defendants
26 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
27 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
28 time worked by Plaintiff and other members of the Class, including by requiring off the clock

1 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
2 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
3 Welfare Commission requirements and other applicable laws and regulations. As a result of these
4 violations, Defendants also failed to timely pay all wages earned in accordance with California
5 Labor Code § 1194.

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

10 69. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
11 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
12 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
13 pay each employee minimum wages.

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

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

20 72. Additionally, under California Labor Code § 2810.3, Advanced Chemical shares
21 with IQ Personnel, Inc., and any other staffing agency it uses, in civil legal responsibility for all
22 workers supplied to Advanced Chemical for their collective failure to pay all earned wages.
23 California Labor Code § 2810.3 requires that “A client employer shall share with a labor
24 contractor all civil legal responsibility and civil liability for all workers supplied by that labor
25 contractor for...the payment of wages.” A “labor contractor” (here, e.g., Priority Workforce) is
26 defined as “an individual or entity that supplies, either with or without a contract, a client
27 employer with workers to perform labor within the client employer's usual course of business.”
28 “Client employer” (here Advanced Chemical is defined as “a business entity, regardless of its

form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.” Upon information and belief, Defendant Advanced Chemical is and has been a client employer within the definition of Labor Code § 2810.3 and shares with Priority Workforce, the labor contractor, all civil legal responsibility, and civil liability for the payment of all wages earned by Plaintiffs and the Class Members. Advanced Chemical is a joint employer of Plaintiff and some of the Class Members with IQ Personnel, Inc., including for the reasons set forth above. Advanced Chemical also directly hires some Class Members, who are subject to similar policies and practices as those Employees placed with Advanced Chemical by IQ Personnel, Inc.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

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

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

21 78. Defendants thus had a consistent policy of not paying Employees wages for all
22 hours worked, including hours at their required regular, overtime, and double-time rates.
23 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
24 and/or, modified certain employees’ hours, including Plaintiff’s, or required Plaintiff and the Class
25 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
26 the Class Members all earned and owed straight time and overtime wages and other benefits, in
27 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
28 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants

1 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
2 employees to work through meal periods or remain under Defendants' control when they were
3 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
4 respond to demands from customers and managers.

5 79. Therefore, Employees were not properly compensated, nor were they paid overtime
6 rates for hours worked in excess of eight hours in a given day and/or forty hours in a given week.
7 Based on information and belief, Defendants did not make available to Employees a reasonable
8 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
9 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
10 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
11 Class Members to work through meal periods when they were required to be clocked out or to
12 otherwise work off the clock to complete their daily job duties.

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

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

1 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
2 Code § 558.

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

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

16 84. Additionally, under California Labor Code § 2810.3, Advanced Chemical shares
17 with IQ Personnel, Inc., and any other staffing agency it uses, in civil legal responsibility for all
18 workers supplied to Advanced Chemical for their collective failure to pay all earned wages.
19 California Labor Code § 2810.3 requires that "A client employer shall share with a labor
20 contractor all civil legal responsibility and civil liability for all workers supplied by that labor
21 contractor for...the payment of wages." A "labor contractor" (here, IQ Personnel, Inc.), is
22 defined as "an individual or entity that supplies, either with or without a contract, a client
23 employer with workers to perform labor within the client employer's usual course of business."
24 "Client employer" (here Advanced Chemical) is defined as "a business entity, regardless of its
25 form, that obtains or is provided workers to perform labor within its usual course of business
26 from a labor contractor." Upon information and belief, Defendant Advanced Chemical is and has
27 been a client employer within the definition of Labor Code § 2810.3 and shares with IQ
28 Personnel, Inc., the labor contractor, all civil legal responsibility and civil liability for failure to

1 pay all wages earned by Plaintiff and the Class Members. California Specialty Farms is a joint
2 employer of Plaintiff and other Class Members, with Priority Workforce, including for the
3 reasons set forth above.

4 85. Consequently, pursuant to the California Labor Code, including Labor Code §§
5 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
6 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
7 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
8 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
9 against Defendants, and each of them, and any additional sums as provided by the Labor Code
10 and/or other statutes.

11 **THIRD CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

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

22 88. Defendants failed to provide Employees with meal periods as required under the
23 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
24 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
25 provided them after Employees worked beyond the fifth hour of their shifts or Employees
26 otherwise had them shortened and interrupted by work demands and requirements to perform off
27 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
28 on the occasions when Employees worked more than ten hours in a given shift, they did so

1 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

6 90. Moreover, Defendants failed to compensate Employees for each meal period not
7 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
8 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
9 employee a meal period in accordance with this section, the employer shall pay the employee one
10 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
11 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
12 period premiums, they upon information and belief underpaid them by miscalculating the regular
13 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
14 compensate the Employees in the Class for each meal period not provided or inadequately
15 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
16 Wage Order.

17 91. Upon information and belief, Defendant Advanced Chemical is and has been a
18 client employer within the definition of Labor Code § 2810.3. Therefore, IQ Personnel, Inc., the
19 labor contractor, must share all civil legal responsibility and civil liability for the payment of all
20 wages earned by Plaintiff and the Class Members, with Advanced Chemical, including the
21 premium penalty wages owed for Defendants' failure to provide meal periods.

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

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

27 98. Defendants failed to authorize and permit Plaintiff and the Class Members to take
28 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees

1 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
2 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
3 12 and 20 of the applicable IWC Wage Orders.

4 99. Upon information and belief, Defendant Advanced Chemical is and has been a
5 client employer within the definition of Labor Code § 2810.3. Therefore, IQ Personnel, Inc., the
6 labor contractor, must share all civil legal responsibility and civil liability for the payment of all
7 wages earned by Plaintiff and the Class Members, with Advanced Chemical, including the
8 premium penalty wages owed for Defendants' failure to provide meal periods.

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

14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 226(a)**
16 **(Against All Defendants)**

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

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

26 103. Defendants failed to provide Plaintiff and the similarly situated Employee Class
27 Members with accurate itemized wage statements in writing, as required by the Labor Code and
28 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to

1 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
2 including for all overtime and double time hours worked and for deficient meal periods and rest
3 breaks, all of which Defendants knew or reasonably should have known were owed to the
4 Employees, as alleged above.

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

17 105. Plaintiff and the Class Members suffered injury as a result of Defendants'
18 knowing and intentional failure to provide them with the wage and hour statements as required by
19 law and are presumed to have suffered injury and entitled to penalties under Labor Code §
20 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide
21 accurate and complete information as required by any one or more of items Labor Code § 226
22 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily
23 determine from the wage statement alone one or more of the following: (i) The amount of the
24 gross wages or net wages paid to the employee during the pay period or any of the other
25 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
26 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross
27 wages to determine the net wages paid to the employee during the pay period, (iii) The name and
28 address of the employer and, (iv) The name of the employee and only the last four digits of his or

1 her social security number or an employee identification number other than a social security
2 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
3 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
4 without reference to other documents or information.

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

13 107. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
14 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
15 Class suffered injuries, including among other things confusion over whether they received all
16 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
17 them to make mathematical computations to analyze whether the wages paid in fact compensated
18 them correctly for all hours worked.

19 108. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
20 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of
21 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
22 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
23 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
24 an award of costs and reasonable attorneys’ fees.

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

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

111. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off-the-clock work, by miscalculating overtime, and by automatically deducting time for meal periods when they were not lawfully provided and not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period plus an additional 30 minutes for an alleged second meal period that was not provided at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee’s daily work shifts. Defendants’ managers would also offset any unapproved overtime or to make a late meal period timely. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

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

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

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

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

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

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

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

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

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

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

20 121. The wages withheld from these Employees by Defendants remained due and owing
21 for more than thirty days from the date of separation from employment.

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

123. 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. Additionally, 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.”

124. Upon information and belief, Defendant Advanced Chemical is and has been a client employer within the definition of Labor Code § 2810.3. Therefore, IQ Personnel, Inc., the labor contractor, must share all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and the Class Members, with Advanced Chemical, including the premium penalty wages owed for Defendants' failure to provide meal periods.

125. 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)

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

127. 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

1 employee suffering injury due to a willful violation of the aforementioned obligations may seek
2 damages, including civil penalties, from the employer.

3 128. During the course of Plaintiffs and Employees' employment, Defendants
4 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
5 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
6 premium pay as discussed above and failing to document and pay for actual hours worked.

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

10 130. Defendants have maintained a common unlawful policy and practice of failing to
11 accurately record all hours worked and all meal period start and end times and by adjusting or
12 otherwise rounding and shaving them down.

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

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

17 **TENTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

22 134. Plaintiff is informed and believes and based thereon alleges that throughout the
23 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-
24 related expenses they incurred. Defendants required Plaintiff and the Class Members to use their
25 cellular phones to conduct work-related business and failed to reimburse for mileage and tools and
26 equipment, as addressed above. Plaintiff and the Class Members must be reimbursed for these
27 necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do
28 so.

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

136. Defendants' knowing and willful failure to reimburse lawful necessary work-related expenses and losses to Plaintiff and the Class Members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work-related expenses. As Defendants failed to inform and misled Plaintiff and the Class Members with regard to their rights, Plaintiff and the Class Members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

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

ELEVENTH CAUSE OF ACTION

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

(Against All Defendants)

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

1 139. Plaintiff is a “person” within the meaning of the Business & Professions Code
2 § 17204, has suffered injury, and therefore, has standing to bring this cause of action for
3 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

26 143. Defendants’ conduct, as alleged above, constitutes unfair competition in violation
27 of the Business & Professions Code § 17200 *et seq.*
28

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

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

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

14 147. Unless restrained by this Court Defendants will continue to engage in such
15 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
16 should make such orders or judgments, including the appointment of a receiver, as may be
17 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
18 deceptive practice prohibited by the Business & Professions Code, including but not limited to
19 the disgorgement of such profits as may be necessary to restore Employees to the money
20 Defendants have unlawfully failed to pay.

21 **TWELFTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

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

1 period.

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

9 151. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
10 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
11 including the penalty provisions, without limitation, based, inter alia, on the following California
12 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
13 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

14 152. More specifically, after complying with the notice procedures of Labor Code §
15 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
16 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
17 addressed underlying claims and seeking penalties as specified by the applicable corresponding
18 provisions, including as follows:

19 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
20 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
21 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
22 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
23 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
24 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
25 to Labor Code § 2699(g)(1);

26 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
27 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
28 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under

1 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
2 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
3 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
4 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
5 pursuant to Labor Code § 2699(g)(1);

6 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
7 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
8 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
9 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
10 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
11 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
12 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
13 providing inaccurate wage statements and failing to maintain records as required under Labor
14 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
15 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
16 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
17 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
18 citation, ...";

19 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
20 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
21 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
22 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
23 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
24 § 2699(g)(1);

25 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
26 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
27 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
28 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties

1 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
2 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
3 pursuant to Labor Code § 2699(g)(1);

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

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

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

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

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

22 154. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
23 the LWDA and Defendants on April 15, 2024 (LWDA-CM-1022438-24) addressing in detail the
24 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
25 theories to support the alleged violations and requested penalties. The LWDA has not provided
26 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
27 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
28 addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

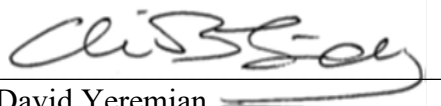
1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

- 1 14. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 3 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 4 16. For penalties under Labor Code § 558, as may be proven;
- 5 17. For an order enjoining Defendants and their agents, servants, and employees, and
6 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
7 duties adumbrated in this Complaint;
- 8 18. For other wages and penalties under the Labor Code as may be proven;
- 9 19. For all general, special, and incidental damages as may be proven;
- 10 20. For an award of pre-judgment and post-judgment interest;
- 11 21. For an award providing for the payment of the costs of this suit;
- 12 22. For an award of attorneys' fees; and
- 13 23. For such other and further relief as this Court may deem proper and just.

14
15 DATED: June 20, 2024

D.LAW, INC.

16
17 By

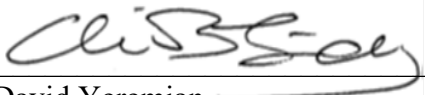

David Yermian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff WAYNE HERBERT
CHARLES and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: June 20, 2024

D.LAW, INC.

By 
David Yermian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff WAYNE HERBERT
CHARLES and all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA:

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 20, 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:

Allison S. Wallin
awallin@littler.com
Heidi Hegewald
HHegewald@littler.com
Littler Mendelson P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

*Attorney for Advanced Chemical
Transport LLC*

Xuong Xan Chu, Agent for Service of Process
IQ Personnel, Inc.
8039 Painter Ave. Ste. 200
Whittier, CA 90602

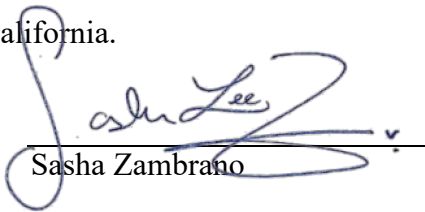
☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary 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.

☒ **(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.

☒ **(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 20, 2024, at Glendale, California.


Sasha Zambrano