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on behalf of himself and others similarly situated

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

JUSTIN ABNEY, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

COASTAL TRACTOR, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV002152

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Under Labor Code § 510;
3. Failure to Pay Vacation Wages;
4. Failure to Comply with Labor Code § 245 *et seq.* and 246;
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Failure to Provide Accurate Wage Statements Under Labor Code § 226(a);
8. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
9. Failure to Produce Requested Employment Records Under Labor Code §§ 226 and 1198.5;
10. Failure to Timely Pay Wages Upon Termination Under Labor Code § 203;
11. Failure to Reimburse Necessary Business Expenses § 2802;
12. Violation of B & P Code § 17200 *et seq.*; and
13. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff JUSTIN ABNEY (“Plaintiff”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendant COASTAL TRACTOR, a California corporation; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff JUSTIN ABNEY resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant COASTAL TRACTOR is a California corporation and lists its principal address with the California Secretary of State in Salinas, California. COASTAL TRACTOR is listed as an employer on Plaintiff’s wage statements during the relevant time period that Plaintiff was employed with Defendants. Plaintiff is informed and believes, and thereupon alleges, that COASTAL TRACTOR. conducts business in Monterey County, and throughout California, and employed, and continues to employ, individuals (including Plaintiff and Class members) in Monterey County, and throughout California.

6. The true names and capacities, whether individual, corporate, associate, or whatever

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

8 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
9 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
10 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
11 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
12 respects as the employers or joint employers of Class Members. Defendants, and each of them,
13 exercised control over the wages, hours or working conditions of Class Members, or suffered or
14 permitted Class Members to work, or engaged, thereby creating a common law employment
15 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
16 employed Class Members.

17 8. Whenever and wherever reference is made in this Complaint to any act by a
18 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
19 failures to act of each defendant acting individually, jointly, and severally.

20 9. Whenever and wherever reference is made to individuals who are not named as a
21 Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants,
22 such individuals at all relevant times acted on behalf of Defendants within the scope of their
23 employment.

24 **JURISDICTION AND VENUE**

25 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
27 a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California
28 Code of Civil Procedure § 382.

11. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred in part in Monterey County. Defendants maintain and operate facilities in Monterey County and employ Plaintiff and other Class Members in Monterey County, while doing business throughout California.

FACTUAL BACKGROUND

12. Class Members consistently worked at Defendants behest without being paid all wages due. Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work; rounding time entries; failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime pay, double time pay, sick pay, and meal and rest break premiums; failing to pay on-call or standby pay; failing to provide meal and rest breaks; failing to furnish accurate wage statements; failing to timely pay wages including final wages all in violation of various provisions of the California Labor Code and applicable Wage Orders. Defendants also failed to pay Class Members “premium pay,” i.e. one hour of wages at each Class Member’s effective hourly rate of pay, for each meal period and/or rest break that Defendants failed to provide or deficiently provided.

13. During the course of Class Members’ employment with Defendants, they were not paid all wages they were owed, including for all worked performed resulting in off the clock work. Class Members were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants’ control. For example, Plaintiff was required to arrive early to open the shop, disarm the alarm, relock the door, and turn on the air compressor and lights prior to clocking in. Several times a week Plaintiff would also have to fuel his work truck prior to clocking in. After clocking out, Plaintiff would have to close and lock up the facility. In addition, Defendants expected Plaintiff to respond to work related calls and messages on his personal cell phone at all times, including times when he was off the clock. Upon information and belief, Class Members were subject to similar pre- and post-shift off the clock work.

1 14. Defendants failed to pay Class Members all wages due and owing because
2 Defendants failed to pay all bonuses and/or commissions earned by Class Members. Defendants
3 maintained a non-discretionary bonus and/or commission program whereby bonus and/or
4 commissions were paid to Class Members when Class Members hit certain sales goals and/or quotas.
5 Upon information and belief, Defendants would *post-facto* change and/or alter the terms non-
6 discretionary bonus and/or commission program in order to avoid paying Class Members all earned
7 bonus and/or commission wages. Upon information and belief, Defendant would make these post-
8 facto changes and/or alterations without proper written notice in violation of Labor Code § 2751.

9 15. Further, Defendants followed a uniform policy and practice of rounding all time
10 entries rather than paying Plaintiff and the Class members for all hours and minutes they actually
11 worked, and generally did so to the detriment of the Employees, and these unlawfully rounded time
12 entries were inputted into Defendants' payroll system from which wage statements and payroll
13 checks were created. Defendants did so with the ostensible intent of paying Class members only for
14 the hours they were scheduled to work, rather than the hours they were actually under Defendants'
15 control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the
16 Class members by systematically undercompensating them.

17 16. Defendants also failed to pay Class Members all wages due and owing because
18 Defendants failed to incorporate non-discretionary bonuses and/or commissions into the regular rate
19 of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California
20 law, Defendants did not incorporate these non-discretionary bonuses and/or commissions paid to
21 the Class Members into the regular rate of pay Defendants used to calculate and pay for overtime,
22 double time, sick pay, and meal and rest break premiums.

23 17. Defendants also required that Plaintiff, and upon information and belief Class
24 members, participate in on-call shifts without proper compensation. Specifically, during certain
25 busy times of the year Defendants would require Employees to be on-call to respond customer
26 needs. Employees' activities were restricted during on-call times as they needed to be near the job
27 site. During this time, Employees were under Defendants' control because they had to immediately
28 report to work. However, they were not paid on-call or standby pay.

1 18. By implementing policies, programs, practices, procedures and protocols which
2 resulted in off the clock work, rounding of time, failing to incorporate non-discretionary bonuses
3 and/or commissions into the regular rate of pay, and failing to pay on-call or standby time,
4 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
5 including underpayment of overtime pay to Class Members over the relevant time period. For
6 example, the above described off the clock work addressed above caused Plaintiff to begin receiving
7 overtime pay later than they should have.

8 19. As a result of the above described requirements to work off the clock; rounding; the
9 failure to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay;
10 failure to pay for on-call/standby time; and the other wage violations they endured at Defendants'
11 hands, Class Members were not properly paid all wages earned and all wages owed to them by
12 Defendants, including when working more than eight (8) hours in any given day and/or more than
13 forty (40) hours in any given week.

14 20. Defendants generally discouraged employees from incurring overtime, as they
15 scheduled shifts for no more than eight hours a day or forty in a week. Plaintiff felt pressured by
16 management and work demands placed upon him to work off the clock and feared being terminated
17 if he did otherwise. Upon information and belief, the other Class members were subjected to similar
18 common policies and practices and were subjected to similar scheduling requirements and off the
19 clock work requirements.

20 21. As a result of Defendants' unlawful policies and practices, Class Members incurred
21 overtime hours worked for which they were not adequately and completely compensated, in addition
22 to the hours they were required to work off the clock. To the extent applicable, Defendants also
23 failed to pay Class Members at an overtime rate of 1.5 times the regular rate for the first eight hours
24 of the seventh consecutive workday in a week and overtime payments at the rate of two (2) times
25 the regular rate for hours worked over eight (8) on the seventh consecutive work day, as required
26 under the Labor Code and applicable IWC Wage Orders.

27 22. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
28 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for

1 all hours worked, and failing to pay minimum wages for all time worked, as required by California
2 law. Defendants thus failed to pay Class Members at least minimum wages for all the time they
3 worked for Defendants in violation of the Labor Code and applicable IWC Wage Orders as the
4 actual times when Class Members were under the control and direction of Defendants was under
5 reported in the hours reflected on the timekeeping records. Furthermore, Defendants' willful actions
6 resulted in the systematic underpayment of wages to Class Members, including underpayment of
7 overtime pay to Class Members over a period of time.

8 23. Therefore, from at least four (4) 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 Class Members their
10 true and correct overtime compensation at premium overtime rates for all hours worked in excess
11 of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked
12 in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding sections
13 of IWC Wage Orders.

14 24. Likewise, from at least four (4) years prior to the filing of this lawsuit and continuing
15 to the present, Defendants paid Plaintiff and Employees non-discretionary bonuses and/or
16 commissions. However, upon information and belief, Defendants failed to incorporate all
17 remunerations, including non-discretionary bonuses and/or commissions, into the calculation of the
18 regular rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and
19 Employees worked overtime and received non-discretionary bonuses and/or commissions,
20 Defendants failed to pay all sick pay by paying a lower overtime rate than required.

21 25. Defendants also had a common policy and practice of systemically failing to pay
22 Plaintiff and Class Members the requisite and accrued vacation time pay in accordance with
23 California law. Specifically, Plaintiff and Class Members earned accrued vested vacation time
24 and/or paid time off during their employment; however, Defendants failed to pay all accrued
25 vacation time and/or paid time off owed to Plaintiff and Class Members at their final rate of pay
26 upon their separation from employment.

27 26. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
28 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required

1 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
2 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
3 without receiving a lawful and timely meal break. Moreover, as mentioned above, Defendants
4 expected Plaintiff to respond to work demands, including responding to phone calls on his personal
5 cell phone, at all times, including times when he was clocked out for meal breaks. Defendants placed
6 their needs over Class Members lawful meal breaks and this resulted in Class Members often having
7 to work through their scheduled meal breaks, or otherwise take shortened ones, because the demands
8 of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal
9 break.

10 27. On the occasions when Class Members worked over 10 hours in a shift, Defendants
11 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
12 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal
13 periods will be evidenced by Defendants' business records, or lack thereof. Defendants also failed
14 to pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective
15 hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

16 28. Therefore, for at least four years prior to the filing of this action through the present,
17 Defendants regularly required Class Members to work shifts in excess of five (5) hours without
18 providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in
19 excess of (10) hours without providing them with second meal periods of not less than thirty
20 minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of wages at each
21 Class Member's effective hourly rate of pay, for each meal period that Defendants failed to provide
22 or deficiently provided.

23 29. Meal period violations thus occurred in one or more of the following manners:

- 24 (a) Class Members were not provided full thirty-minute duty free meal periods
25 for work days in excess of five (5) hours and were not compensated one (1)
26 hour's wages in lieu thereof, all in violation of, among others, Labor Code
27 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
28 Order(s);

- (b) Class Members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were required to carry cell phones and respond to work related calls and messages at all times and were therefore restricted in their ability to take a full thirty-minute meal period.

30. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour of wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. In addition, as mentioned above, Defendants expected Plaintiff to respond to phone calls on his personal cell phone at all times, including while taking rest breaks. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, or major fraction thereof, nor did Defendants pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

31. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to carry cell phones and respond to work

1 related calls and messages at all times including while on rest breaks and
2 were therefore required to remain on-duty during rest periods or otherwise
3 had their rest periods interrupted by work demands.

4 32. Defendants also consistently failed to issue accurate itemized wage statements as
5 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed
6 to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
7 calculate and pay overtime compensation, double time, sick pay, and meal and rest break premiums.
8 Thus, the wage statements do not comply with Labor Code § 226(a)(9). Moreover, the wage
9 statements given to Class Members failed to accurately account for unpaid wages and overtime
10 because their actual hours worked were under-reported due to off the clock work and because
11 Defendants unlawfully rounded hours worked to the detriment of Class Members. Additionally, the
12 wage statements given to Class Members failed to accurately account for premium pay for
13 deficiently provided meal periods and rest breaks.

14 33. From at least four (4) years prior to filing this lawsuit and continuing to the present,
15 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members
16 at the time of their termination of within seventy-two (72) hours of their resignation, as required by
17 California wage-and-hour laws. Class Members were not paid all regular and overtime wages
18 because Defendants failed to pay for all hours worked by failing to incorporate non-discretionary
19 bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime,
20 double time, sick pay, and meal and rest break premiums, and failing to pay meal and rest break
21 premiums owed, as further detailed in this Complaint. Defendants' failure to pay said wages within
22 the required time was willful within the meaning of Labor Code § 203.

23 34. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
24 continuing to the present, Defendants have consistently failed to keep accurate time and wage
25 records as required by California wage-and-hour laws.

26 35. Likewise, from at least four (4) years prior to filing this lawsuit and continuing to the
27 present, Defendants have had a consistent policy of denying Class Members the right to inspect and
28 receive all of their payroll records, timecards, and personnel records in a timely fashion.

36. Additionally, from at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, including for cell phone expenses, as described above. Plaintiff was also required to purchase and/or use his own tools. Upon information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

37. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2751, 2698 *et seq.*, 2802, and California Code of Regulations, Title 8, section 11000 *et seq.*

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

CLASS ALLEGATIONS

39. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

c. Subclass 3. Vacation Wages Subclass. All Class members who did not receive all of their accrued vest vacation wages upon separation of employment.

d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

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

f. Subclass 6. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

g. Subclass 7. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

h. Subclass 8. Payroll Records Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

i. Subclass 9. Requested Employment Records Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing fully produce requested employment records in a timely fashion.

j. Subclass 10. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

k. Subclass 11. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

l. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

40. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against

Defendants, the Class Period should be adjusted accordingly.

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

42. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

43. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

44. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants’ employment records will provide information as to the number and location of all Class Members.

B. Commonality

45. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;

- 1 c. Whether Defendants failed to pay Class Members overtime as required under Labor
2 Code § 510;
- 3 d. Whether Defendants failed to pay Employees vacation wages as required under
4 Labor Code § 227.3;
- 5 e. Whether Defendants failed to properly pay Employees sick pay as required under
6 Labor Code § 245;
- 7 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
8 Wage Orders, by failing to provide Class Members with requisite meal periods or
9 premium pay in lieu thereof;
- 10 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
11 Orders, by failing to authorize and permit Class Members to take requisite rest breaks
12 or provide premium pay in lieu thereof;
- 13 h. Whether Defendants violated Labor Code § 226(a) by providing Class Members with
14 inaccurate wage statements;
- 15 i. Whether Defendants violated Labor Code § 1194 by failing to compensate all
16 Employees during the relevant time period for all hours worked, whether regular or
17 overtime;
- 18 j. Whether Defendants failed to maintain required payroll records under Labor Code
19 §§ 1174 and 1174.5;
- 20 k. Whether Defendants failed to produce all requested employment records in a timely
21 fashion under Labor Code §§ 226 and 1198.5;
- 22 l. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
23 wages and compensation due and owing at the time of termination of employment;
- 24 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
25 necessary business expenses Defendants required them to incur in performing their
26 job duties;
- 27 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 28 o. Whether Defendants conduct was willful; and

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

C. Typicality

46. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

1 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
2 them.

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

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

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

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(Against All Defendants)**

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

1 54. Defendants failed to pay Class Members minimum wages for all hours worked.
2 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
3 Class Members for all hours worked, including all the time required to remain on duty and under
4 Defendants' control during breaks and due to the work demands placed upon them by Defendants'
5 management. Employees would work hours and not receive all wages owed, including as alleged
6 above in connection with off the clock work, unlawful time rounding practices, the miscalculation
7 of the regular rate of pay, and failing to pay for on-call and standby time. During the relevant time
8 period, Defendants thus regularly failed to pay minimum wages to Class Members, to their
9 detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members for
10 hours worked during alleged meal and rest periods for which Class Members were consistently
11 denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and hour practices
12 manifested, without limitation, as a result of implementing a uniform policy and practice that denied
13 accurate compensation to Class Members as to minimum wage pay.

14 55. In California, employees must be paid at least the then applicable state minimum
15 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
16 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
17 timely pay its employees for all hours worked. Defendants failed to do so.

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

21 57. The applicable minimum wages fixed by the commission for work during the
22 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

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

1 59. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
2 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
3 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
4 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
5 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
6 be used as a credit against a minimum wage obligation.

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

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

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

17 63. 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 Class Members.

20 64. Wherefore, Class Members are entitled to recover the unpaid minimum wages
21 (including double minimum wages), liquidated damages in an amount equal to the minimum wages
22 unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to
23 California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
24 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment
25 of any statutory penalties against Defendants, in a sum as provided by the California Labor Code,
26 including § 558, and/or other applicable statutes.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME UNDER LABOR CODE § 510**

3 **(Against All Defendants)**

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

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

12 67. By their conduct, as set forth herein, Defendants violated California Labor Code §
13 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class Members:
14 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
15 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on
16 the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
17 in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours
18 on any seventh day of work in a workweek.

19 68. Defendants had a consistent policy of not paying Class Members wages for all hours
20 worked, including by requiring off the clock work, improperly rounding Employees’ hours and
21 failing to pay for on-call or standby time, to avoid paying Plaintiff and the Class members all earned
22 and owed straight time and overtime wages and other benefits, in violation of the California Labor
23 Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the
24 Division of Labor Standards and Enforcement. Defendants have also violated these provisions by
25 requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods
26 or remain under Defendants’ control when they were required to be clocked out or to otherwise
27 work off the clock to complete their daily job duties and respond to demands from customers and
28 managers. Therefore, Employees were not properly compensated, nor were they paid overtime rates

1 for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based
2 on information and belief, Defendants did not make available to Employees a reasonable protocol
3 for correcting time records when Employees worked overtime hours or to fix incorrect time entries
4 or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have
5 also violated these provisions by requiring Plaintiff and other similarly situated Class members to
6 work through meal periods when they were required to be clocked out or to otherwise work off the
7 clock to complete their daily job duties

8 69. Additionally, Defendants failed to incorporate non-discretionary bonuses and/or
9 commissions into the regular rate of pay used to calculate and pay overtime pay, double time, sick
10 pay, and meal and rest break premiums. Defendants, and each of them, have intentionally and
11 improperly changed, adjusted and/or modified certain employees' hours, including Plaintiff's, in
12 order to avoid paying Class Members all earned and owed straight time and overtime wages and
13 other benefits, in violation of the California Labor Code, the California Code of Regulations and the
14 IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.
15 Defendants have also violated these provisions by requiring Class Members to work through
16 portions of their meal period. Therefore, Class Members were not properly compensated, nor were
17 they paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours
18 in a given week. Based on information and belief, Defendants did not make available to Class
19 Members a reasonable protocol for correcting time records when Class Members worked overtime
20 hours or to fix incorrect time entries.

21 70. Defendants' failure to pay Class Members the unpaid balance of regular wages owed
22 and overtime compensation, as required by California law, violates the provisions of Labor Code
23 §§ 510 and 1198, and is therefore unlawful.

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

1 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
4 the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in this section
5 are in addition to any other civil or criminal penalty provided by law.” Defendants have violated
6 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
7 Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code § 558.

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

14 73. Class Members have been damaged by these violations of California Labor Code §§
15 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

16 74. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
17 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants are
18 liable to Class Members for the full amount of all their unpaid wages and overtime compensation,
19 with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any
20 statutory penalties against Defendants, and each of them, and any additional sums as provided by
21 the Labor Code and/or other statutes.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY VACATION WAGES**

24 **(Against All Defendants)**

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

27 76. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
28 employment policy provides for paid vacation and an employee is terminated without having taken

1 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
2 accordance with said contract of employment or policy respecting eligibility or time served.

3 77. Here, Defendants failed to pay all vested vacation time at Employees' final rate upon
4 separation of employment.

5 78. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant to
6 Labor Code § 227.3.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

9 **(Against All Defendants)**

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

12 80. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
13 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
14 times relevant, Defendants have failed to properly compute the amount due for paid sick time in
15 conformance with the pay calculation under California Labor Code § 246(1).

16 81. Defendants paid non-discretionary bonuses and/or commissions to Employees but
17 Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick
18 pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick
19 time is used according to the requirements set forth in California Labor Code § 246(1), Defendants
20 paid sick leave to Employees at a lower rate, in violation of the law.

21 82. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
22 § 245 *et seq.* and §§ 245 *et seq.* and 246.

23 **FIFTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 84. Class Members regularly worked shifts greater than five (5) hours and in some

1 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
2 someone for a shift of more than five (5) hours without providing him or her with a meal period of
3 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
4 her with a second meal period of not less than thirty (30) minutes.

5 85. As discussed above, Defendants failed to provide Class Members with meal periods
6 as required under the Labor Code. Defendants placed their needs over Class Members lawful meal
7 breaks and this resulted in Class Members consistently having to work through their scheduled meal
8 breaks because the demands of the job would not avail them the opportunity to take a lawfully
9 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
10 when Class Members worked more than ten (10) hours in a given shift, they did so without receiving
11 a second uninterrupted thirty (30) minute meal period as required by law. Moreover, as mentioned
12 above, Defendants expected Plaintiff to respond to work demands, including responding to phone
13 calls on his personal cell phone, at all times, including times when he was clocked out for meal
14 breaks.

15 86. Defendants thus failed to provide Class Members with meal periods as required by
16 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
17 providing them late or for less than thirty (30) minutes, or by requiring them to perform work during
18 breaks.

19 87. Moreover, Defendants failed to compensate Class Members for each meal period not
20 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
21 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a
22 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
23 pay at the employee's regular rate of compensation for each workday that the meal period is not
24 provided. Defendants failed to compensate Class Members for each meal period not provided or
25 inadequately provided, as required under Labor Code § 226.7. Additionally, upon information and
26 belief, when Defendants did pay meal period premiums, they did so at the normal regular rate of
27 pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly
28 calculating the regular rate.

1 88. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
2 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
3 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
4 sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants,
5 and each of them, in a sum as provided by the Labor Code and other statutes.

6 **SIXTH CAUSE OF ACTION**

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

8 **(Against All Defendants)**

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

11 90. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
12 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
13 minutes net rest time per four (4) work hours.

14 91. Class Members consistently worked consecutive four (4) hour shifts and were
15 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize
16 and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage
17 Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each
18 consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest
19 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants placed
20 their needs over Class Members lawful rest breaks, and this resulted in Class Members consistently
21 having to work through their scheduled rest breaks because the demands of the job would not avail
22 them the opportunity to take a lawfully uninterrupted and off-duty rest break. In addition, as
23 mentioned above, Defendants expected Plaintiff to respond to phone calls on his personal cell phone
24 at all times, including while taking rest breaks.

25 92. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
26 that if an employer fails to provide an employee a rest period in accordance with this section, the
27 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
28 for each workday that the rest period is not provided.

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

94. Defendants failed to authorize and permit Class Members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Class Members with an additional hour of pay at each Class Member's effective hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

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

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS UNDER

LABOR CODE § 226(a)

(Against All Defendants)

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

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

98. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used

1 to calculate and pay overtime compensation, double time, sick pay, and meal and rest break
2 premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9). Moreover, the
3 wage statements given to Class Members failed to accurately account for unpaid wages and overtime
4 because their actual hours worked were under-reported due to off the clock work and because
5 Defendants unlawfully rounded hours worked to the detriment of Class Members. Additionally, the
6 wage statements given to Class Members failed to accurately account for premium pay for
7 deficiently provided meal periods and rest breaks.

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

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

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

6 101. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
7 226(a), Class Members suffered injuries, including among other things confusion over whether they
8 received all wages owed them, the difficulty and expense involved in reconstructing pay records,
9 and forcing them to make mathematical computations to analyze whether the wages paid in fact
10 compensated them correctly for all hours worked.

11 102. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
12 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual damages
13 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
14 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
15 thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’ fees.

16 EIGHTH CAUSE OF ACTION

17 FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5

18 (Against All Defendants)

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

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

25 105. During the course of Plaintiff’s and Employees’ employment, Defendants
26 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
27 required by Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime,
28 and premium pay as discussed above.

106. Accordingly, Defendants are liable for civil penalties pursuant to the Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

NINTH CAUSE OF ACTION

FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS

UNDER LABOR CODE §§ 226 and 1198

(Against All Defendants)

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

108. Pursuant to Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one calendar days from the date of the request.

109. Pursuant to Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty calendar days from the date the employer receives the written request, subject to some limited exceptions. Failure to comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

110. Plaintiff sent written requests through his counsel to Defendants for copies of his payroll records, timecards, and personnel records. However, Plaintiff has not received all of his requested records as of the date of this Complaint.

111. Defendants violated Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by Plaintiff.

112. On information and belief, Defendants' failure to provide Plaintiff with all of his

requested employment records is not an isolated incident, but was instead consistent with Defendants' policy and practice that applied to Plaintiff and Employees.

113. Pursuant to Labor Code § 1198.5, Plaintiff and Class Members are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs. Pursuant to Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class Members similarly situated are similarly entitled.

TENTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES UNDER LABOR CODE § 203
(Against All Defendants)

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

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

116. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

117. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

118. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by required off the clock work and failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime, double time, sick pay, and meal and rest break premiums. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

119. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until

1 paid for up to thirty (30) days from the date they were due.

2 **ELEVENTH CAUSE OF ACTION**

3 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

4 **(Against All Defendants)**

5 120. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in
6 full herein.

7 121. Under Labor Code § 2802(a) an employer must indemnify its employees for all
8 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of his or her duties, or of his or her obedience to the directions of the employer.

10 122. Defendants have regularly required Plaintiff to incur business expenses in the course
11 of performing his required job duties for Defendants including for phone expenses and internet
12 expenses when working from home. Upon information and belief, Class Members incurred similar
13 costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them
14 in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Class
15 Members for all such necessary expenditures, thus entitling them to reimbursement according to
16 proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders,
17 paragraph 9.

18 123. As a result of the unlawful acts of Defendants, Class Members have been deprived
19 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
20 plus interest and penalties thereon, attorneys' fees, and costs.

21 **TWELFTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

26 125. Plaintiff, on behalf of himself, Class Members, and the general public, brings this
27 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
28 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class

1 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
2 interest within the meaning of Code of Civil Procedure § 1021.5.

3 126. Plaintiff is a “person” within the meaning of Business & Professions Code
4 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
5 relief, restitution, and other appropriate equitable relief.

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

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

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

28 130. Defendants’ conduct, as alleged above, constitutes unfair competition in violation of

1 the Business & Professions Code § 17200 *et seq.*

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

6 132. By the conduct alleged herein, Defendants have engaged and continue to engage in
7 a business practice which violates California and federal law, including but not limited to, the
8 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
9 Code including Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558,
10 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2751 and 2802, for which this Court
11 should issue declaratory and other equitable relief pursuant to California Business & Professions
12 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
13 competition, including restitution of wages wrongfully withheld.

14 133. As a proximate result of the above-mentioned acts of Defendants, Class Members
15 have been damaged, in a sum to be proven at trial.

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

23 **THIRTEENTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
25 **(Against All Defendants)**

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

28 136. Plaintiff and the Employees in the Class are also aggrieved employees as defined

1 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either
2 were or are employed by the alleged violators, Defendants (“Aggrieved Employees”) during the
3 relevant time period.

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

11 138. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
12 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
13 the penalty provisions, without limitation, based, inter alia, on the following California Labor Code
14 sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1,
15 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

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

21 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
22 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
23 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
24 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558,
26 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to
27 Labor Code § 2699(g)(1);

28 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved

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

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

20 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
21 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
22 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
23 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
24 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
25 § 2699(g)(1);

26 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
27 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
28 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §

2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for 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. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this 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.

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

141. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **May 24, 2024**, addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed

herein and in the PAGA Notice Letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members 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 penalties pursuant to Labor Code § 227.3, as may be proven;
6. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 246, as may be proven;
7. For compensatory damages in the amount of the hourly wage made by Class Members 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;
8. For compensatory damages in the amount of the hourly wage made by Class Members 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;
9. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
10. For penalties pursuant to Labor Code § 1174.5, as may be proven;
11. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
12. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;
13. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

6 16. For other wages and penalties under the Labor Code as may be proven;

7 17. For all general, special, and incidental damages as may be proven;

8 18. For an award of pre-judgment and post-judgment interest;

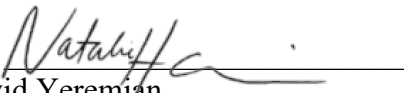
9 19. For an award providing for the payment of the costs of this suit;

10 20. For an award of attorneys' fees; and

11 21. For such other and further relief as this Court may deem proper and just.

12 DATED: July 29, 2024

D.LAW, INC.

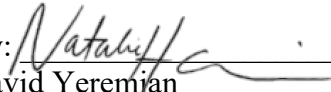
13
14 By: 
15 David Yeremian
16 Natalie Haritonian
17 Matthew Carraher
18 Attorneys for Plaintiff JUSTIN ABNEY and
19 all others similarly situated
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27
28

DEMAND FOR JURY TRIAL

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

DATED: July 29, 2024

D.LAW, INC.

By: 
David Yeremjan
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff JUSTIN ABNEY and
all others similarly situated

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

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[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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


Silvia Pimentel