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EVAN OWEN ALLEN

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
7/12/2024 9:53 AM
By: Mariah Mora, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

EVAN OWEN ALLEN, an individual, on
his own behalf and on behalf of all others
similarly situated,

Plaintiff,

v.

5E BORON AMERICAS, LLC, a
Delaware limited liability company; 5E
ADVANCED MATERIALS, INC.; a
Delaware corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: CIVSB2416231

[Assigned for all purposes to Hon. Carlos
Cabrera, in Dept. S24-SBJC]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 1194, 1198; IWC Wage Order No. 16);**
- 2. FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 16)**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 16)**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* § 226.7; IWC Wage Order No. 16);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 16);**
- 6. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. *Labor Code* §§201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* §2802);**

- 1 8. FAILURE TO PROVIDE UNIFORM
2 AND MAINTENANCE ALLOWANCE
(Cal. Labor Code §2802);
3 9. FAILURE TO PROVIDE PROPER
4 WAGES FOR ALTERNATIVE
5 WORKWEEKS (Cal. Labor Code § 511);
6 10. FAILURE TO ALLOW INSPECTION OF
7 EMPLOYMENT RECORDS (Cal. Labor
8 Code §1198.5);
9 11. UNFAIR COMPETITION (Cal. Bus. &
10 Prof. Code §§17200 et seq.); and
11 12. PRIVATE ATTORNEY GENERAL ACT
(PAGA)

12 **DEMAND FOR JURY TRIAL**

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

17 Evan Owen Allen (“Plaintiff”) alleges the following:

18 1. This is a class action brought under California law by an individual who was
19 employed by 5E Boron Americas, LLC (“5EBA”) and 5E Advanced Materials, Inc. (“5EAM”)
20 (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on
21 behalf of himself and others similarly situated to recover wages from Defendants due to
22 Defendants’ systematic failure to: pay overtime/double time wages, pay minimum wages due to
23 rounding, provide meal and rest breaks (or pay the statutory compensation due), issue accurate
24 wage statements, pay all wages upon termination, reimburse business expenses, provide a
25 uniform maintenance allowance, provide proper wages for alternative workweeks and failure to
26 allow inspection of employee records.

27 2. Plaintiffs have worked as employees for Defendants in Newberry Springs,
28 California. While working, Plaintiffs have been forced to endure stressful and illegal workplace
conditions created by Defendants’ efforts to maximize profits and tightly control labor costs.

1 3. Plaintiff, like his co-workers whom Defendants also employed during the
2 applicable limitations period, spend their workdays as Process Operators and other nonexempt
3 employees, under illegal and highly regimented circumstances. That regimen results from
4 Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplishe
5 by not paying for all labor costs, failing to pay overtime/double time, failing to pay minimum
6 wages due to rounding, refusing to provide meal periods, refusing to provide rest breaks, not
7 paying the required extra hour for missed meal and rest breaks, failing to issue accurate wage
8 statements, failing to pay all wages on termination, failing to reimburse business expenses, failing
9 to provide a uniform maintenance allowance, failing to provide proper wages for alternative
10 workweeks, failing to allow inspection of employee records and by using other unlawful
11 stratagems to ensure that labor costs remain artificially low.

12 4. Plaintiff brings this class action to recover, among other things, wages and
13 penalties from unpaid wages earned and due, including but not limited to, premium
14 overtime/double time wages, minimum wages, late and missed rest break wages, wages due to
15 discharged or quitting employees, penalties for failure to provide accurate itemized wage
16 statements, penalties for failure to allow inspection of records, reimbursement of business
17 expenses, reimbursement of uniform maintenance allowance, proper wages for alternative
18 workweeks, attorneys' fees, costs, and expenses.

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

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

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8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of San Bernardino and because Defendants owned and operated their businesses in the County of San Bernardino.

PLAINTIFF

- (a) An individual over age 18 and a resident of Newberry Springs, California;
- (b) Employed as an hourly employee for Defendant in Newberry Springs, California;
- (c) Did not receive overtime/double time compensation required by *Labor Code* §§510, 511, 1194 and 1198 and the applicable Wage Orders;
- (d) Did not receive minimum wages due to illegal rounding in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and the applicable Wage Orders;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) When terminated from his employment, did not receive his final paycheck within the time limits prescribed by *Labor Code* §201;

- 1 (i) Was not reimbursed for business expenses as required by *Labor Code*
2 §2802;
- 3 (j) Was not provided a uniform maintenance allowance as required by *Labor*
4 *Code* §2802;
- 5 (k) Was not provided proper wages for alternative workweeks as required by
6 *Labor Code* § 511; and
- 7 (l) Was not allowed to inspect his employment records as required by *Labor*
8 *Code* §1198.5. Each of these was a violation of the *Labor Code*.

9 **DEFENDANTS**

10 10. Plaintiff is informed and believes, and based on that information and belief,
11 alleges, Defendant 5EBA is, and at all times mentioned herein was:

- 12 (a) A Delaware limited liability company, with a principal place of business
13 at 9329 Mariposa Road, Suite 210, Hesperia, California 92344. Defendant
14 has been authorized to do business and has been doing business in the
15 County of San Bernardino;
- 16 (b) The former employer of Plaintiff and the current and former employer of
17 the putative Class members;
- 18 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 19 (d) Failed to pay Plaintiff and all putative Class members premium
20 overtime/double time wages;
- 21 (e) Failed to pay Plaintiff and all putative Class members minimum wages due
22 to illegal rounding;
- 23 (f) Failed to provide Plaintiff and all putative Class members with meal and
24 rest periods, failed to provide Plaintiff and all putative Class Members with
25 accurate itemized wage statements and failed to issue final paychecks
26 timely to Plaintiff and all putative Class Members;
- 27 (g) Failed to reimburse business expenses to Plaintiff and all putative Class
28 Members;

- 1 (h) Failed to provide a uniform maintenance allowance to Plaintiff and all
2 putative Class Members;
3 (i) Failed to provide proper wages for alternative workweeks to Plaintiff and
4 all putative Class Members; and
5 (j) Failed to allow Plaintiff and all putative Class Members to inspect
6 employment records. Each of these was a violation of the *Labor Code*.

7 11. Plaintiff is informed and believes, and based on that information and belief,
8 alleges, that Defendant 5EAM is, and at all times mentioned herein was:

- 9 (a) A Delaware corporation, with a principal place of business at 9329
10 Mariposa Road, Suite 210, Hesperia, California 92344. Defendant has
11 been authorized to do business and has been doing business in the County
12 of San Bernardino;
13 (b) The former employer of Plaintiff and the current and former employer of
14 the putative Class members;
15 (c) Paid Plaintiff and all Class Members on an hourly basis;
16 (d) Failed to pay Plaintiff and all putative Class members premium
17 overtime/double time wages;
18 (e) Failed to pay Plaintiff and all putative Class members minimum wages due
19 to illegal rounding;
20 (f) Failed to provide Plaintiff and all putative Class members with meal and
21 rest periods, failed to provide Plaintiff and all putative Class Members with
22 accurate itemized wage statements and failed to issue final paychecks
23 timely to Plaintiff and all putative Class Members;
24 (g) Failed to reimburse business expenses to Plaintiff and all putative Class
25 Members;
26 (h) Failed to provide a uniform maintenance allowance to Plaintiff and all
27 putative Class Members;
28

- 1 (i) Failed to provide proper wages for alternative workweeks to Plaintiff and
2 all putative Class Members; and
3 (j) Failed to allow Plaintiff and all putative Class Members to inspect
4 employment records. Each of these was a violation of the *Labor Code*.

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

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

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

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

1 16. Plaintiff is informed and believes, and based on that information and belief alleges,
2 that the Defendants named in this Complaint, including DOES 1 through 100, inclusive,
3 knowingly and willfully acted in concert, conspired and agreed together among themselves and
4 entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff,
5 and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of
6 Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants,
7 the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants’
8 concerted actions, were such that, to Plaintiff’s information and belief, and to all appearances,
9 Defendants, and each of them, represented a unified body so that the actions of one Defendant
10 were accomplished in concert with, and with the knowledge, ratification, authorization and
11 approval of each of the other Defendants.

12 **JOINT EMPLOYER ALLEGATIONS**

13 17. Plaintiff is informed and believes and thereon alleges that given the amount of
14 influence, control and direction Defendants 5EBA and 5EAM exerted over Plaintiff’s
15 employment, Defendants 5EBA and 5EAM were Plaintiff’s co-employers.

16 18. Plaintiff is informed and believes and thereon alleges that Defendant 5EBA
17 directly employed, or on Defendant 5EAM’s behalf exercised control over Plaintiff’s wages,
18 hours and/or working conditions (start time, end time, etc.) such that 5EBA was a joint employer
19 with 5EAM.

20 **CLASS ALLEGATIONS**

21 **A. The Definition of Class**

22 19. The Class (“the Class”) is defined as follows:

23 (a) “All current and former employees who were hourly paid employees of
24 Defendants and worked for Defendants in California at any time during the period
25 commencing on the date that is four (4) years prior to the filing of this Complaint
26 and continuing through the present date (the “Class Period”).”

27 (b) “All persons who were hourly paid employees of Defendants and worked for
28 Defendants in California and left the employ of Defendants at any time during the

1 period commencing on the date that is within one (1) year prior to the filing of this
2 Complaint and continuing through the present date (the “Class Period”).

3
4 20. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
5 amend or modify the Class description with greater specificity or further division into subclasses
6 or limitation to particular issues.

7 **B. Maintenance of the Action**

8 21. Plaintiff brings this action individually and on behalf of himself and as
9 representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and
10 17204 and *Code of Civil Procedure* § 382.

11 **C. The Class Requisites**

12 22. At all material times, Plaintiff was a member of the Class.

13 23. The Class action meets the statutory prerequisites for maintaining a class action
14 under Code of Civil Procedure § 382 in that:

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

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

21 (c) The claims of the representative Plaintiff are typical of the claims of each
22 Class member. Plaintiff, like all Class members, has sustained damages
23 arising from Defendants’ violations of the laws of the State of California.
24 Plaintiff, and the Class members, were and are similarly or identically
25 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
26 pattern of misconduct engaged in by the Defendants;

27 (d) The representative Plaintiff has, and will continue to, fairly and adequately
28 represent and protect the interests of the Class and has retained counsel who

are competent and experienced in class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the Class members that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

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

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

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for fairly and efficiently adjudicating the claims of the Class;
- (c) The Class members are so numerous that it is impractical to bring all of them before the Court;
- (d) Plaintiff and other Class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants is responsible in an amount sufficient to adequately compensate the Class members;
- (f) Without Class certification, the prosecution of separate actions by individual Class members would create a risk of:

1 i. Inconsistent or varying adjudications for individual Class members
2 that would establish incompatible standards of conduct for
3 Defendants; and/or,

4 ii. Adjudication for individual Class members that would, as a practical
5 matter, dispose of other non-party members' interests, or that would
6 substantially impair or impede the non-parties' ability to protect their
7 interests, by, for example, potentially exhausting the funds available
8 from Defendant, and

9 (g) Defendant has acted or refused to act on grounds generally applicable to the
10 Classes, making final injunctive relief appropriate for the Class, as a whole.

11 26. Plaintiff contemplates eventually issuing notice to the proposed Class Members
12 that would set forth the subject and nature of the action. The Defendants' own business records
13 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any
14 further notices may be required, Plaintiff would contemplate using additional media and/or
15 mailing.

16 **GENERAL ALLEGATIONS**

17 27. At all times material hereto, Defendants have been and are, borax mining
18 companies operating in California.

19 28. Plaintiff and members of the Class were employed as Process Operators and other
20 nonexempt employees at Defendants' jobsite in Newberry Springs, California at various times
21 during the Class Period.

22 **THE CONDUCT**

23 29. Plaintiff seeks relief from Defendants' uniform policies and practices of denying
24 Plaintiff and members of the Class wages and compensation owed under California law.

25 30. Starting in or about May 2023 and continuing to June 23, 2023, Defendants
26 employed Plaintiff on an hourly basis as a Process Operator in Newberry Springs, California.

27 31. While employed by Defendants as a Process Operator, Plaintiff was paid \$28.00
28 per hour.

1 32. The employment by Defendants of the Class Members, and each them, is governed
2 by Industrial Welfare Commission Wage Order 16, which covers those persons employed in the
3 construction, drilling, logging and mining industries.

4 33. Under California law, non-exempt employees as defined by Wage Order 16, are
5 entitled to premium wages for overtime/double time worked, minimum wages, a 30-minute lunch
6 period for each 10 hours worked, a 10-minute paid rest break for every four hours worked, or
7 major fraction thereof. Non-exempt employees are also entitled to one hour pay at their regular
8 pay rate for each day the requisite rest and/or meal periods are not provided.

9 34. Here, at all times during the relevant time period, Plaintiff and the Class routinely
10 worked schedules such that they were due pay at overtime/double time rates. During this period,
11 it was the practice and policy of Defendants to not pay employees at appropriate overtime/double
12 time rates. Monies for unpaid overtime/double time remain due and owing.

13 35. Plaintiff and Class members were routinely not paid minimum wages due to
14 rounding. Defendants instructed Plaintiff and Class members to unlawfully round down or
15 “shave” the hours they worked such that they were not paid for all hours worked. Plaintiff and
16 Class members were instructed to write down their shift start/end times, even when they started
17 earlier than their shift start time and/or worked beyond their shift end time.

18 36. Plaintiff’s pay stubs show rounding to the quarter hour by Defendants.

19 37. Plaintiff and the Class members’ meal breaks were at times afforded late and/or
20 routinely interrupted. Further, Plaintiff and Class members were not allowed to leave the premises
21 during meal/rest breaks.

22 38. Plaintiff and Class members’ rest breaks were routinely interrupted and/or not
23 afforded.

24 39. As a result of Defendants’ failure to pay employees at required overtime/double
25 time rates, minimum wages due to rounding and afford proper meal/rest breaks, the wage
26 statements issued to the employees did not comply with *Labor Code* §226 and California
27 Industrial Welfare Commission (“IWC”) Wage Order 16 in that they did not accurately reflect
28 all wages earned and due and owing.

40. As a further result of Defendants' failure to pay employees at required overtime/double time rates, minimum wages due to rounding and afford proper meal/rest breaks, when the employees left their employ, they were not timely paid all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 16. Further, it was the practice of Defendants to not pay employees the final paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 16.

41. Here, Defendants required Plaintiff and the Class to use their personal cell phones, vehicles and bring their own tools for work-related purposes, but failed to reimburse them for such use and tools.

42. Defendants failed to reimburse Plaintiff and Class members for uniforms and maintenance thereof. Defendant required Plaintiff and Class members to wear protective gear, such as boots, safety goggles, and hard hats, but required Plaintiff and Class members to purchase the protective gear themselves and clean and maintain the protective gear.

43. Plaintiff and Class members worked 2-2-3 (2 rest/2 work/3 rest/2 work/2 rest/ 3 work/2 rest) work schedules. Plaintiff's job offer letter states that he will be working a 2-2-3 work schedule and "overtime will be calculated based on the 12 hour AWS." Defendants failed to provide proper wages for alternative workweeks. Plaintiff and Class members were not paid overtime until after the twelfth hour of work. Further, Plaintiff and Class members were also not paid double time.

44. Defendant failed to allow Plaintiff and Class members to inspect their personnel records.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME/DOUBLE TIME

**(Labor Code §§510, 511, 558, 1194, 1194.3, 1198 and Wage Order 16 By Plaintiffs Against
all Defendants and Does 1-100)**

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

1 46. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code
2 §§510, 1194, and 1198, and IWC Wage Order No. 16, Defendants were required to compensate
3 Plaintiff and Class members with premium pay for all overtime work performed, for hours
4 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight
5 (8) hours on the seventh (7th) consecutive day of any work week. Further, Defendants were
6 required to compensate Plaintiff with premium pay for all double-time performed, for hours
7 worked in excess of twelve (12) hours per workday and for work in excess of eight hours on any
8 seventh day of a workweek.

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

13 48. Pursuant to IWC Wage Order No 16-2001, § 3, "Employment beyond eight (8)
14 hours in any workday is permissible provided the employee is compensated for such overtime at
15 not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
16 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday...

17 49. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

50. As a result of Defendants' improper alternative workweek, Plaintiff and Class members were not paid overtime after 40 hours of work in a week at time and one half their regular rate for hours worked in excess of eight hours a day. Additionally, Plaintiff and Class members were not paid double time hours they were owed.

51. Defendants violated Labor Code section 510 and the IWC Wage Orders when they paid Plaintiff and Class members their regular rate for their 12 hours worked in a day, and failed to pay Plaintiff and Class members overtime wages for any and all work performed in excess of 8 hours per day, 40 hours per week. Defendants also violated section 510 and the IWC Wage Orders when they paid Plaintiff and Class members their regular rate for their more than 12 hours worked in a day, and failed to pay Plaintiff and Class members double time wages for any and all work performed in excess of 12 hours per day.

52. Plaintiff and Class members were required by Defendants to use their personal cell phones to communicate with Defendants while off the clock for work-related activities such as texting and calling their supervisors and co-workers. However, Defendants failed to pay Plaintiff and Class members for their off the clock work.

53. Throughout Plaintiff's employment, Plaintiff and Class members worked overtime/double time hours on a daily basis and were not paid overtime/double time pay on a regular basis.

54. Throughout Plaintiff's employment, Defendants failed and refused to pay and properly calculate overtime/double time compensation to Plaintiff and Class Members as required by law.

55. The foregoing overtime/double-time compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime/double time, Plaintiff and Class Members suffered damages in an amount to be proven at trial.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING

(IWC Wage Order No. 16; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs

Against all Defendants and Does 1 through 100)

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

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

59. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 16-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

60. Pursuant to Wage Order 16, Defendants are required to pay the members of the Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

1 61. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work and
2 the standard conditions of labor fixed by the commission shall be the maximum hours of work
3 and the standard conditions of labor for employees. The employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.”

6 62. Plaintiff’s and Class members’ timesheets reflect quarter rounding of hours.
7 Defendants instructed Plaintiff and Class members to write their start and end shift times, not the
8 actual times worked. Thus, Plaintiff and Class members’ actual hours were rounded down.

9 63. Defendants used paper timesheets for Plaintiff and Class members to keep track
10 of their time. Additionally, timesheets were filled out at the end of the week, not on the day(s)
11 the work was performed. Plaintiff and Class members wrote down their scheduled start/end shift
12 times even if they arrived early and/or left late.

13 64. Defendants’ pattern, practice and uniform administration of corporate policy
14 regarding illegal employee compensation as described herein is unlawful and creates an
15 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the Class,
16 in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
17 appropriate rate.

18 65. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
19 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
20 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid for
21 all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the
22 time associated with the overtime for which they received no compensation. *See Sillah v.*
23 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
24 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
25 they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp.
26 3d 1115, 1132-33 (N.D. Cal. 2016).

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1 66. Plaintiff and the other Class Members suffered and continue to suffer losses
2 related to the use and enjoyment of compensation due and owing to them as a direct result of
3 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
4 proof at trial and within the jurisdictional limitations of this Court.

5 67. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
6 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
7 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

8 **THIRD CAUSE OF ACTION**

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

10 **(IWC Wage Order No. 16; Labor Code §§ 226.7, 512 By Plaintiffs Against all Defendants**
11 **and Does 1 through 100)**

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

14 69. California Labor Code §226.7(a) prohibits an employer from requiring an
15 employee to work during any meal period mandated by an applicable Industrial Wage Order.
16 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
17 employee to work during a meal or rest break or recovery period mandated pursuant to an
18 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
19 Commission..."

20 70. California Labor Code §1198 makes unlawful the employment of an employee
21 under conditions the IWC prohibits.

22 71. IWC Order No. 16-2001(11)(A) provides, in relevant part: "No employer shall
23 employ any person for a work period of more than five (5) hours without a meal period of not
24 less than 30-minutes, except that when a work period of not more than six (6) hours will complete
25 the day's work the meal period may be waived by mutual consent of the employer and the
26 employee."

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1 72. IWC Order No. 16-2001 (11)(c) further provides, in relevant part: "Unless the
2 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
3 considered an 'on duty' meal period and counted as time worked."

4 73. Section 512(a) of the California Labor Code provides, in relevant part, that:

5 An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less than
7 30-minutes, except that if the total work period per day of the employee is no
8 more than six hours, the meal period may be waived by mutual consent of both
9 the employer and employee. An employer may not employ an employee for a
10 work period of more than 10 hours per day without providing the employee with
11 a second meal period of not less than 30-minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period
was not waived.

12
13 74. The Labor Code and Wage Order provisions cited above require California
14 employers to provide employees with off-duty 30-minute meal periods on or before the fifth hour
15 of their shifts. To satisfy this obligation, California employers must: (1) make employees aware
16 of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and (2) ensure
17 that employees are actually free of job duties for thirty minutes per day on or before the fifth hour
18 of their shifts.

19 75. As alleged herein, Defendants failed to relieve employees of duties for timely meal
20 breaks throughout the Class Period. Plaintiff and the members of the Class were at times required
21 to work through their meal period at the fifth hour of their shifts at the direction of Defendants
22 and/or with their endorsement, encouragement, knowledge and acquiescence. Moreover,
23 Defendants routinely interrupted Plaintiff and Class members' meal breaks to explain and inform
24 them of work duties taking place after the breaks. Further, Plaintiff and Class members were
25 routinely not afforded second meal periods on days when they worked 12 or more hours (which
26 was every day), required by law. Plaintiff and Class members did not sign waivers regarding their
27 second meal breaks. Lastly, Plaintiff and Class members were not allowed to leave the premises
28 during their meal breaks.

1 76. Plaintiff and Class members were routinely not afforded legally compliant meal
2 breaks.

3 77. Under California law, employers must also record their employees' meal periods:
4 "Every employer shall keep accurate information with respect to each employee, including the
5 following: ... Meal periods ... shall also be recorded. Meal periods during which operations cease
6 ... need not be recorded." IWC Order No. 16, § (7)(A)(3). Where the employer has failed to keep
7 records required by statute, the consequences of such failure should fall on the employer, not the
8 employee. In such a situation, imprecise evidence by the employee can provide a sufficient basis
9 for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as Defendants
10 had an obligation under the record-keeping requirements of the Wage Order to track meal periods
11 unless "all work ceases", Defendants knew or should have known its employees were regularly
12 missing meal periods during the Class Period.

13 78. Defendants did not require Plaintiff and Class members to write down the precise
14 times that meal breaks were actually afforded. Further, on at least one occasion, Plaintiff's
15 supervisor completed his timecard regarding his meal breaks without any input from Plaintiff.

16 79. Defendants have a policy or practice of failing to ensure that Plaintiff and
17 members of the Class take the meal periods required by California Labor Code §226.7 and IWC
18 Wage Order No. 16-2001 §11.

19 80. By their actions in not affording Plaintiff and Class Members meal periods,
20 Defendants violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount
21 of one additional hour of pay at the employee's regular rate of compensation for each work period
22 during each day in which Defendants failed to provide employees with statutory timely off-duty
23 meal periods.

24 81. Defendants also have a policy or practice of failing to pay each of their employees
25 who was not provided with a meal period as required an additional one hour of compensation at
26 each employee's regular rate of pay.

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

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

10 **FOURTH CAUSE OF ACTION**
11 **FOR FAILURE TO PROVIDE REST PERIODS**
12 **(Labor Code § 226.7 and IWC Wage Order No. 16 By Plaintiffs Against all Defendants**
13 **and Does 1 through 100)**

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

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

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

23 87. Defendants have intentionally and improperly denied rest periods to Plaintiff and
24 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

25 88. Defendant failed to instruct Plaintiff and Class members to write down the start
26 and end times of their rest breaks. Plaintiff and Class members did not write down the start and
27 end times of their rest breaks.

28 ///

1 89. At all times relevant hereto, Plaintiff and members of the Class have worked 12
2 or more hours daily.

3 90. At all times relevant hereto, Defendants failed to provide rest periods as required
4 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members' rest breaks
5 were routinely interrupted. Further, Plaintiff and Class members were routinely not afforded third
6 rest breaks on their 12-hour shifts.

7 91. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff
8 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
9 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
10 jurisdictional limits of the Court, and which will be ascertained according to proof at trial.

11 **FIFTH CAUSE OF ACTION**
12 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED**
13 **WAGE STATEMENTS**

14 **(Labor Code §226 By Plaintiffs Against all Defendants and Does 1 through 100)**

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

17 93. Pursuant to the applicable IWC Wage Orders, Defendants were the employers of
18 Plaintiff and the Class.

19 94. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 16-
20 2001 section 7, Defendants are required to maintain and provide accurate records relating to
21 employee compensation including all formulas and production records used to calculate wages
22 due.

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

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

6 97. Notwithstanding these provisions. Defendants have engaged in a uniform practice
7 of refusing to maintain and provide the accurate records and wage statements required by
8 California law.

9 98. Throughout the Class Period, Defendants intentionally and knowingly provided
10 Plaintiff and other members of the Class with weekly itemized wage statements containing
11 inaccurate information regarding the wages earned by Plaintiff and members of the Class in that
12 the payments owed to Plaintiff and the members of the Class for overtime/double time
13 compensation, minimum wages due to rounding, untimely or missed meal and rest periods, wages
14 owed due to failure to provide proper wages for alternative workweeks, were not included in
15 gross wages earned by Plaintiff and members of the Class. Further, Defendant failed to furnish
16 Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the
17 number of hours worked and the rates paid.

18 99. Although Plaintiff began working for Defendants on or about May 8, 2023, his
19 first paystub dated May 26, 2023, incorrectly reflects May 20, 2023 as his start date. Further, that
20 same paystub shows 60 regular work hours and 24 overtime hours for that pay period, which
21 would have been nearly impossible and/or necessitated double time.

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

24 101. Plaintiff and members of the Class were damaged by these failures because,
25 among other things, the failures led them to believe that they were not entitled to overtime/ double
26 time compensation, minimum wages, pay for meal and rest periods not provided, proper wages
27 for alternative workweeks, even though they were so entitled and these failures hindered them
28 from determining the amounts of wages owed to them.

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

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

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION

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

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

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

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

107. Plaintiff and the Class were discharged and/or resigned from Defendants' employ and Defendants willfully failed to pay Plaintiff and the Class wages due them.

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

SEVENTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE UNIFORM AND MAINTENANCE ALLOWANCE

(Labor Code §2802 By Plaintiffs Against all Defendants and Does 1 through 100)

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

115. Under California law, if an employer requires employees to wear a uniform, the employer must pay for and maintain the uniform for the employee. Labor Code §2802.

116. In addition to the cost of the uniform, the employer must provide employees with reasonable maintenance of the uniforms. The employer can either maintain the uniform itself, or pay the employee a weekly maintenance allowance.

117. An employer may never impose a financial burden on employees, with respect to paying for and maintaining clothing, which would reduce the employees' wage rate below the minimum wage.

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1 118. Here, Defendants required Plaintiff and Class members to wear protective gear,
2 such as safety goggles, hard hats and boots. However, Defendants do not reimburse for the
3 protective gear that Plaintiff and Class members were required to purchase and do not maintain
4 the uniforms and protective gear. Plaintiff and members of the Class pay for the maintenance and
5 cleaning themselves.

6 119. Defendants failed to reimburse for and maintain the uniforms and protective gear,
7 nor pay Plaintiff and members of the Class a weekly maintenance allowance.

8 120. As a proximate result of the aforementioned violations of Labor Code § 2802,
9 Plaintiff and members of the Class have been damaged in an amount according to proof at the
10 time of trial.

11 121. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
12 members of the Class are entitled to recovery from Defendants for reimbursement of necessary
13 expenditures including interest and attorneys' fees.

14 **NINTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE PROPER WAGES FOR ALTERNATIVE WORKWEEKS**

16 ***(Labor Code § 511 By Plaintiffs against all Defendants and Does 1 through 100)***

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

19 123. At all times relevant, Plaintiff and Class members worked as nonexempt
20 employees entitled to overtime and double time.

21 124. Upon information and belief, Defendants required Plaintiff and the Class members
22 to work under an improper alternative workweek without following California mandatory
23 election procedures established under the IWC wage order.

24 125. Upon information and belief, Defendants adopted an alternative workweek
25 schedule without written disclosure to the affected employees and without a secret ballot election.

26 126. On information and belief, Defendants did not disclose in writing to Plaintiff and
27 the Class members the intention of adopting an alternative workweek. Additionally, upon
28 information and belief, Defendants did not conduct a secret ballot election, and thus, the

1 alternative workweek was not approved by two thirds of the affected employees in Plaintiff's
2 work unit as required by the applicable IWC Wage Order. Plaintiff and Class members did not
3 know of or participate in any election to adopt an alternative workweek schedule in their work
4 unit.

5 127. As a result of Defendants' improper alternative workweek, Plaintiff and Class
6 members did not receive overtime compensation at time and one-half their regular rate for hours
7 worked in excess of eight hours a day. Further, Plaintiff and Class members did not receive double
8 time compensation at double their regular rate for hours worked in excess of twelve hours a day.

9 128. Defendants violated Labor Code § 511 and the IWC Wage Orders when they paid
10 Plaintiff and Class members their regular rate for their first twelve hours worked in a day, and
11 failed to pay Plaintiff and Class members overtime wages for any and all work performed in
12 excess of eight (8) hours per day, forty (40) hours per week, and/or double time for any and all
13 work performed in excess of twelve (12) hours per day, as required by law.

14 129. Section 511 of the California Labor Code states: (a) Upon the proposal of an
15 employer, the employees of an employer may adopt a regularly scheduled alternative workweek
16 that authorizes work by the affected employees for no longer than 10 hours per day within a 40-
17 hour workweek without the payment to the affected employees of an overtime rate of
18 compensation pursuant to this section. A proposal to adopt an alternative workweek schedule
19 shall be deemed adopted only if it receives approval in a secret ballot election by at least two-
20 thirds of affected employees in a readily identifiable work unit. The regularly scheduled
21 alternative workweek proposed by an employer for adoption by employees may be a single work
22 schedule that would become the standard schedule for workers in the work unit, or a menu of
23 work schedule options, from which each employee in the unit would be entitled to choose. (b)
24 An affected employee working longer than eight hours but not more than 12 hours in a day
25 pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an
26 overtime rate of compensation of no less than one and one-half times the regular rate of pay of
27 the employee for any work in excess of the regularly scheduled hours established by the
28 alternative workweek agreement and for any work in excess of 40 hours per week. An overtime

1 rate of compensation of no less than double the regular rate of pay of the employee shall be paid
2 for any work in excess of 12 hours per day and for any work in excess of eight hours on those
3 days worked beyond the regularly scheduled workdays established by the alternative workweek
4 agreement. Nothing in this section requires an employer to combine more than one rate of
5 overtime compensation in order to calculate the amount to be paid to an employee for any hour
6 of overtime work.

7 130. Plaintiff alleges that he and Class members worked 2-2-3 (2 rest/2 work/3 rest/2
8 work/2 rest/ 3 work/2 rest) work schedules. Plaintiff's job offer letter states that he will be
9 working a 2-2-3 work schedule and "overtime will be calculated based on the 12 hour AWS."
10 Defendants failed to provide proper wages for alternative workweeks. Plaintiff and Class
11 members were not paid overtime until after the twelfth hour of work. Further, Plaintiff and Class
12 members were also not paid double time.

13 131. Plaintiff alleges that he and other members of the Plaintiff Class were working
14 between fifty (50) to sixty (60) hours per workweek.

15 132. Specifically, Plaintiff's and Class members' were scheduled to begin their shifts
16 at 6 AM and clock out at 6:00 PM for a 12-hour day.

17 133. Defendants failed to pay Plaintiff and the class all overtime/double time wages as
18 established under the IWC Wage Orders when they failed to compensate one and one-half times
19 the employee's regular rate for hours worked in excess of eight (8) hours a day, as alleged herein
20 and double the employee's regular rate for hours worked in excess of twelve (12) hours a day.

21 134. Labor Code § 1194, in part, provides that any employee receiving less than the
22 legal overtime/double time compensation is entitled to recover in a civil action the unpaid balance
23 of the full amount of the overtime/double time compensation.

24 135. Defendants have knowingly and willfully refused to perform their obligations to
25 compensate Plaintiff and Class members for all wages earned and all hours worked, in violation
26 of state law. As a direct result, Plaintiff and Class members have suffered, and continue to suffer,
27 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
28 and expenses and attorneys' fees in seeking to compel Defendants to fully perform their

obligation under state law, in accordance with Plaintiff and the Class members' respective damage amounts, according to proof at the time of trial.

136. Defendants committed such actions alleged knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and Class members, from improper motives amounting to malice, and in conscious disregard of Plaintiff and Class members' rights.

137. Plaintiff and Class members are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts, according to proof at the time of trial.

138. As a proximate result of the above-mentioned violations. Plaintiff and Class members have been damaged in an amount according to proof at the time of trial.

TENTH CAUSE OF ACTION

FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS

(Labor Code §1198.5 By Plaintiffs against all Defendants and Does 1 through 100)

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

140. California Labor Code Section 1198.5 provides:

- (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.
- (b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,..... later than 30 calendar days from the date the employer receives the request...
- (k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified I

1 this section... the current or former employee may recover a penalty of seven
2 hundred fifty dollars (\$750) from the employer.

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

5 141. Additionally, pursuant to Wage Order 16, at section 7 re: Records, employers are
6 required to keep accurate payroll records on each employee, and such records must be made
7 readily available for inspection by the employee upon reasonable request. The employer must
8 also maintain accurate production records.

9 142. On or about May 16, 2024, Plaintiff' counsel issued a written request to
10 Defendants for copies of his personnel records.

11 143. Under California Labor Code Sections 226, 432 and 1198.5, such records were to
12 include all records relating to Plaintiff's hours worked, wage statements and compensation.
13 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
14 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of his
15 records.

16 144. As a direct result and consequence of Defendants' failure and refusal to permit
17 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree
18 mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a result of
19 Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of
20 \$750 based upon Defendants' violation of §1198.

21 **ELEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against all Defendants and**
24 **Does 1 through 100)**

25 145. Plaintiff and the Class reallege and incorporate by reference all of the allegations
26 set forth in this Complaint.

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1 146. Pursuant to applicable IWC Wage Orders, Defendants were the employers of
2 Plaintiff and the Class. Defendants are also "person(s)" as that term is defined in Business &
3 Professions Code §17021.

4 147. The Business & Professions Code defines unfair competition as any unlawful,
5 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
6 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1) pay
7 Plaintiff and the Class overtime/double time compensation; (2) pay minimum wages due to
8 rounding; (3) pay Plaintiff and the Class meal periods not provided, (4) pay Plaintiff and the Class
9 rest periods not provided, (5) furnish Plaintiff and the Class with accurate itemized wage
10 statements, (6) pay Plaintiff and the Class wages due when leaving their employ, (7) reimburse
11 business expenses, (8) provide uniform maintenance allowances, (9) pay proper wages for
12 alternative workweeks; and (10) allow inspection of employment records, all in violation of
13 Business & Professions Code §§ 17200 *et seq.*

14 148. By and through the unfair and unlawful business practices described herein,
15 Defendants have obtained valuable property, money and services from the Plaintiff and the Class
16 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment of
17 Plaintiff and the Class.

18 149. All the acts described herein are violations of, among other things, the Labor Code
19 and applicable Industrial Commission Wage Orders, are unlawful and in violation of public
20 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
21 constitute unfair and unlawful business practices in violation of Business & Professions Code §§
22 17200 *et seq.*

23 150. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary
24 to restore to them the money and property which Defendants have acquired, or of which Plaintiff
25 and the Class have been deprived by means of the above-described unfair and unlawful business
26 practices.

27 151. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful, and that injunctive relief should be

1 issued restraining Defendants from engaging in any of the above-described unfair and unlawful
2 business practices in the future.

3 152. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful business
5 practices of Defendants. As a result of the unfair and unlawful business practices described
6 above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless
7 Defendants are restrained from continuing to engage in these unfair and unlawful business
8 practices. In addition, Defendants should be required to disgorge the unpaid moneys to Plaintiff
9 and the Class.

10 **TWELFTH CAUSE OF ACTION**

11 **(Damages Pursuant to Private Attorney General Act Against Employers)**

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

14 154. Plaintiff brings this action on his own behalf and on behalf of all current and
15 former employees of Defendants who were employed in California for the previous four years
16 seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period
17 violations, and rest periods violations as set forth in this pleading.

18 155. On May 9, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by
19 and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State
20 of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via
21 Certified Mail Return Receipt Requested to the defendant.

22 156. More than 65 days have passed since the above letter, and Plaintiff’s counsel has
23 not received any notice from the LWDA stating an intention to prosecute Plaintiff’s PAGA
24 claims.

25 157. Plaintiff has, therefore complied with the administrative exhaustion requirements
26 of PAGA.

27 158. Plaintiff seeks Labor Code penalties, attorney’s fees, and costs, in an amount
28 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
3 and against Defendants, and each of them, as follows:

4 1. For compensatory damages in the amount of unpaid overtime/double time due to
5 Plaintiff and Class Members, according to proof;

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

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

10 4. For compensatory damages in the amount of Plaintiff and Class Members' cell
11 phone expenses, vehicles and tools for business purposes, costs and attorneys' fees pursuant to
12 Cal. Code Civ. Proc. §2802(c);

13 5. For compensatory damages for failure to indemnify for uniform maintenance;

14 6. For compensatory damages for failure to pay proper wages for alternative
15 workweeks;

16 7. For an award of consequential damages in Plaintiff and Class Members' favor
17 and against Defendants, in an amount to be proven at trial;

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

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

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

26 11. For prejudgment interest accrued on all due and unpaid overtime/double time
27 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
28 *Code* §§218.6 and 1194(a), according to proof;

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

13. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 16-2001(14);

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

15. For an award of restitution of wages to Plaintiff and Class Members in an amount equal to the amount of wages owed and unpaid, according to proof;

16. For injunctive relief requiring Defendants to comply with *Labor Code* 1198.5(b)(1);

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

18.

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

20. For other injunctive relief ordering Defendants to notify Plaintiff and Class Members that they have not been paid the proper amounts in accordance with California law;

21. For punitive and exemplary damages in a sum to be determined at trial; and

22. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Evan Owen Allen hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

Date: July 12, 2024

LIPELES LAW GROUP, APC

By: 

Jasmine J. Badawi

Attorneys for Plaintiff, Evan Allen