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9 Attorneys for Plaintiff MANUEL GONZALES

10 [counsel continued on next page]

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 MANUEL GONZALES, on behalf of himself
and all others similarly situated, and the
15 general public,

16 *Plaintiff,*

17 v.

18 ROSE HILLS COMPANY, a Delaware
corporation; DIGNITY MEMORIAL, a
19 business entity of unknown form; SERVICE
CORPORATION INTERNATIONAL, a
20 business entity of unknown form; SCI
21 SHARED SERVICES, INC., a Delaware
corporation; and DOES 1 through 50,
22 inclusive,

23 *Defendants.*

Case No.: 2:24-cv-04632-MEMF-AS

[Assigned to District Judge, Maame Ewusi-
Mensah Frimpong]

**JOINT STIPULATION FOR ENTRY OF
AN ORDER GRANTING PLAINTIFF
LEAVE TO FILE FIRST AMENDED
CLASS ACTION COMPLAINT**

Complaint Filed: May 3, 2024
Removal Date: June 3, 2024

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Attorneys for Defendants ROSE HILLS COMPANY; DIGNITY MEMORIAL; SERVICE
CORPORATION INTERNATIONAL; and SCI SHARED SERVICES, INC.,

1 Plaintiff MANUEL GONZALES (“Plaintiff”), on behalf of himself, all others similarly
 2 situated, and the general public, and Defendants ROSE HILLS COMPANY; DIGNITY
 3 MEMORIAL; SERVICE CORPORATION INTERNATIONAL; and SCI SHARED SERVICES,
 4 INC. (“Defendants”) (collectively, “the Parties”), by and through their undersigned counsel of record,
 5 respectfully submit this Joint Stipulation for Entry of an Order:

6 WHEREAS, Plaintiff filed his Class Action Complaint on May 3, 2024, in Los Angeles
 7 County Superior Court alleging various violations under the California Labor Code and Business and
 8 Professions Code;

9 WHEREAS, Plaintiff provided a notice letter dated May 3, 2024, to the LWDA and
 10 Defendants regarding his intention to commence an action under the Private Attorneys General Act
 11 of 2004, California Labor Code § 2698 *et. seq.* (“PAGA”);

12 WHEREAS, Plaintiff represents that the LWDA did not respond indicating an intention to
 13 conduct its own investigation within the statutory period, and Plaintiff contends he is therefore entitled
 14 to commence a cause of action for PAGA Penalties Pursuant to Labor Code § 2698, *et seq.*;

15 WHEREAS, on June 3, 2024, Defendants removed the action to this Court;

16 WHEREAS, Plaintiff desires to enter the First Amended Complaint (“FAC”) attached as
 17 **Exhibit A** to this Joint Stipulation, which amends the original Complaint to add the PAGA claim;

18 WHEREAS, Defendants do not oppose the filing of the proposed FAC and the Parties agree
 19 that, notwithstanding Defendants’ agreement to the filing of the FAC, Defendant is not admitting to
 20 the merits of the articulated claims therein, denies the action is appropriate for class or representative
 21 action treatment, and maintains that Plaintiff’s claims are subject to private binding arbitration;

22 WHEREAS, Plaintiff agrees that it will not argue that Defendants’ stipulated agreement to the
 23 filing of this FAC is to be treated in any way as an intent to waive their right to seek to compel
 24 arbitration of this lawsuit.

25 THEREFORE, the Parties hereby stipulate that:

- 26 1. Plaintiff should be permitted leave to file the FAC attached as **Exhibit A**;
- 27 2. Plaintiff’s FAC is deemed filed by the Court upon the filing of the parties’
- 28 Joint Stipulation; and

1 3. Defendant shall have thirty (30) days from the filing of the Joint Stipulation
2 to file a responsive pleading.

3
4 Dated: July 30, 2024

D.LAW, INC.

5
6 /s/ David Keledjian

7 Emil Davtyan
8 David Yermian
9 David Keledjian
10 David Arakelyan
11 Attorneys for Plaintiff
12 MANUEL GONZALEZ, and the putative class

13
14 Dated: July 30, 2024

STINSON LLP

15
16 /s/ Carrie M. Francis

17 Carrie M. Francis
18 Attorneys for Defendants
19 ROSE HILLS COMPANY, DIGNITY
20 MEMORIA, SERVICE CORPORATION
21 INTERNATIONAL, and SCI SHARED
22 SERVICES, INC.
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28

EXHIBIT A

1 D.LAW, INC.
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 8

9 Attorneys for Plaintiff MANUEL GONZALES

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

13 MANUEL GONZALES, on behalf of himself
 and all others similarly situated, and the
 14 general public,

15 *Plaintiff,*

16 v.

17 ROSE HILLS COMPANY, a Delaware
 corporation; DIGNITY MEMORIAL, a
 18 business entity of unknown form; SERVICE
 CORPORATION INTERNATIONAL, a
 19 business entity of unknown form; SCI
 SHARED SERVICES, INC., a Delaware
 20 corporation; and DOES 1 through 50,
 21 inclusive,

22 *Defendant.*

Case No.: 2:24-cv-04632-MEMF-AS

Amended As a Matter of Right Pursuant to
 Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198);
4. Failure to Pay Proper Sick Pay (Lab. Code § 246);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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h.alexanian@d.law¶

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 CALIFORNIA¶
 ¶
 FOR THE COUNTY OF LOS ANGELES¶

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1 Plaintiff MANUEL GONZALES ("Plaintiff"), on behalf of himself, all others similarly
2 situated, and the general public, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class action against Defendants ROSE HILLS COMPANY, a
5 Delaware corporation; DIGNITY MEMORIAL, a business entity of unknown form; SERVICE
6 CORPORATION INTERNATIONAL, a business entity of unknown form; SCI SHARED
7 SERVICES, INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred
8 to as "Defendants") for alleged violations of the California Labor Code and California Business and
9 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 10 a. failed to pay them overtime wages at the correct rate;
- 11 b. failed to pay them double time wages at the correct rate;
- 12 c. failed to pay them overtime and/or double time wages by failing to include all
13 applicable remuneration in calculating the regular rate of pay;
- 14 d. failed to provide them with meal periods;
- 15 e. failed to provide them with rest periods;
- 16 f. failed to pay them premium wages for missed meal and rest periods;
- 17 g. failed to pay them proper sick time pay;
- 18 h. failed to provide them with accurate written wage statements;
- 19 i. failed to pay them all their final wages following separation of employment.

20 Based on these alleged Labor Code violations, Plaintiff now brings this class and
21 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
22 restitution, and related relief on behalf of himself, all others similarly situated, and the general public.

23 JURISDICTION AND VENUE

24 2. This matter was removed by Defendant to this Court from the Los Angeles County
25 Superior Court. Plaintiff does not challenge the removal at this time.

26 PARTIES

27 3. Plaintiff MANUEL GONZALES is, and at all relevant times mentioned herein, an
28 individual residing in the State of California.

Deleted: <#>This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiff from Defendants' conduct exceeds the minimal jurisdiction of the Superior Court of the State of California.[¶] Venue is proper in the County of Sacramento pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant is found, maintains offices, transacts business and/or has an agent therein.[¶] Venue is proper in Los Angeles County because Defendants' have at all times alleged herein, conducted business in Los Angeles County, and throughout California. As such, venue is proper in any county in California.

1 4. Plaintiff is informed and believes, and thereupon alleges that Defendant ROSE HILLS
2 COMPANY is, and at all relevant times mentioned herein, a Delaware corporation doing business in
3 the State of California.

4 5. Plaintiff is informed and believes, and thereupon alleges that Defendant DIGNITY
5 MEMORIAL is, and at all relevant times mentioned herein, a business entity of unknown form doing
6 business in the State of California.

7 6. Plaintiff is informed and believes, and thereupon alleges that Defendant SERVICE
8 CORPORATION INTERNATIONAL is, and at all relevant times mentioned herein, a business entity
9 of unknown form doing business in the State of California.

10 7. Plaintiff is informed and believes, and thereupon alleges that Defendant SCI SHARED
11 SERVICES, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
12 business in the State of California.

13 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
14 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
15 will amend this Complaint to allege the true names and capacities of the DOE defendants when
16 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
17 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
18 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
19 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
20 defendants when ascertained.

21 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
22 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
23 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
24 or all of the other defendants, and in doing the things alleged herein, were acting within the course
25 and scope of such relationship and with the full knowledge, consent, and ratification by such other
26 defendants.

27 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
28 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and

1 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
2 and omissions alleged herein.

3 11. This action has been brought and may be maintained as a class action pursuant to
4 F.R.C.P. Rule 23, because there is a well-defined community of interest among the persons who
5 comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any
6 difficulties likely to be encountered in managing this case as a class action.

7 12. **Relevant Time Period:** The relevant time period is defined as the time period
8 beginning four years prior to the filing of this action until judgment is entered.

- 9 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
10 separately, and/or any staffing agencies and/or any other third parties in hourly or
11 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action ("Hourly Employee
Class").
- 12 b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in
13 a shift in excess of five hours during the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.
- 14 c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a
15 shift of at least three and one-half (3.5) hours the four years prior to the filing of
this action and ending on the date that final judgment is entered in this action.
- 16 d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
17 separated from their employment with Defendants during the period beginning
18 three years before the filing of this action and ending when final judgment is
entered.
- 19 e. **Sick-Pay Class:** All persons employed by Defendants in California who, at any
20 time from four years prior to the filing of this action and ending on the date that
final judgment is entered in this action, worked for more than 30 days for
21 Defendants, and were not paid for at least one hour of sick time for every 30 hours
of work thereafter, or at least 3 days of sick time for every 12-month period of
employment.
- 22 f. **Wage Statement Class:** All persons employed by Defendants in California during
23 the period beginning one year before the filing of this action and ending when final
judgment is entered.
- 24 g. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class**
25 members employed by Defendants in California during the four years prior to the
filing of this action and ending on the date that final judgment is entered in this
26 action.

27 13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
28 to amend or modify the class definitions with greater specificity, by further division into sub-classes

Deleted: Code of Civil Procedure section 382

and/or by limitation to particular issues.

14. **Numerosity**: The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

15. **Commonality and Predominance**: Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members.

These common questions include, but are not limited to:

- a. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- b. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- c. Whether Defendants failed to pay premium wages to class members when they have not been provided with meal and rest periods at the appropriate rates of pay;
- d. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- e. Whether Defendants failed to pay proper sick time pay;
- f. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- g. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- h. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203; and
- i. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

16. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff

1 is informed and believes, and thereupon alleges that Defendants have a policy or practice of failing
 2 to comply with the California Labor Code and Business and Professions Code as alleged in this
 3 Complaint.

4 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and
 5 has no interests that are adverse to, or otherwise conflict with, the interests of absent class members
 6 and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and
 7 adequately represent and protect the interests of the other class members.

8 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
 9 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
 10 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
 11 of Plaintiff and absent class members.

12 19. **Superiority:** A class action is vastly superior to other available means for fair and
 13 efficient adjudication of the class members' claims and would be beneficial to the parties and the
 14 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
 15 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
 16 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
 17 due to many individual class members are likely to be relatively small and would thus make it
 18 difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a
 19 class action will serve an important public interest by permitting class members to effectively pursue
 20 the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
 21 or contradictory judgments inherent in individual litigation.

22 **GENERAL ALLEGATIONS**

23 20. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
 24 statutory periods.

25 21. Defendants had a common policy and practice of systemically failing to pay Plaintiff
 26 and Class Members proper wages and overtime for all hours worked, at the proper rates of pay. First,
 27 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
 28 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay

1 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
2 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
3 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
4 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
5 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
6 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
7 them.

8 22. Next, Plaintiff and Class Members were also consistently required to perform work,
9 off-the-clock, for which they were not paid wages. Specifically, Plaintiff and Class Members would
10 clock in a before their scheduled shift and would not get compensated from the actual time they
11 clocked in. Additionally, Plaintiff and Class Members would be required to put on protective gear,
12 such as steel toe boots, hard hats, and safety gloves prior to clocking in. Finally, Plaintiff and Class
13 Members were required to perform work during unpaid meal periods which they were systemically
14 denied, including having to keep and monitor their company radios during meal periods and rest
15 breaks. The forgoing and uncompensated working time was under the direction and control of
16 Defendants, for which no wages were paid.

17 23. This uncompensated time caused Plaintiff and Class Members to work in excess of
18 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
19 and Class Members to minimum and overtime wages, which they were systemically denied.

20 24. Defendants also failed to Plaintiff and Class Members overtime wages at the proper
21 and applicable regular rates of pay. Specifically, Plaintiff and Class Members earned performance-
22 based non-discretionary bonuses in addition to their hourly pay. However, these supplemental
23 earnings were not accounted for when determining Plaintiff and Class Members' regular rates of pay,
24 and respective and proper overtime rates of pay.

25 25. Defendants had a common policy and practice of systemically denying Plaintiff and
26 Class Members the opportunity to take meal periods in compliance with the California Law.
27 Specifically, Plaintiff and Class Members were required to keep and monitor their work radios during
28 their meal and rest breaks. Additionally, Plaintiff and Class Members were constantly interrupted

1 during their meal breaks via radio calls. Next, due to understaffing and heavy workloads, Plaintiff
 2 and Class Members were denied the opportunity to take timely meal periods prior to the completion
 3 of their fifth hour of work. Furthermore, Plaintiff and Class Members were not relieved of all work
 4 duties during unpaid meal periods and were interrupted during meal breaks or required to keep
 5 working during meal breaks.

6 26. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
 7 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
 8 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
 9 take their meal periods, or that advised Class Members of their meal and rest period rights; and (3)
 10 Defendants' practice of requiring putative class members to continue working through their meal and
 11 rest periods due to the excessive workload.

12 27. Defendants had a common policy and practice of systemically denying Plaintiff and
 13 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
 14 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
 15 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
 16 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
 17 no formal compliant written rest period policy that encouraged employees to take their rest periods,
 18 or that properly advised Plaintiff and Class Members of their rest period rights; and (3) Defendants'
 19 policy and practice of requiring putative class members to continue working through their rest breaks
 20 due to the excessive workload, including having to keep and monitor their company radios during
 21 meal periods and rest breaks.

22 28. Plaintiff and Class Members were consistently interrupted during their rest breaks via
 23 their radios constantly. Additionally, on shifts that Plaintiff and Class Members worked between ten
 24 to twelve hours, Plaintiff and Class Members were not given their required third rest break.

25 29. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
 26 wages at their appropriate regular rates of pay for each meal and rest period denied.

27 30. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
 28 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

31. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

32. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

33. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

34. Finally, Defendants had a common policy and practice of systemically failing to pay Plaintiff and Class Members the requisite sick time pay in accordance with California Law. Specifically, Plaintiff and Class Members worked for Defendants for more than 30 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12-month period of work. Additionally, the sick pay paid to Plaintiff and Class Members did not account for the shift differential pay as well as performance-based non-discretionary bonuses, which were never factored into the rate upon which sick pay was accrued and paid.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, 1174, and 1198)

(Plaintiff and Meal Period Sub-Class)

35. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully alleged herein.

36. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendant entitled to the full meal period protections of both the Labor

Code and the applicable Industrial Welfare Commission Wage Order.

37. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

38. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

39. Compensation for missed meal periods constitutes wages within the meaning of Labor Code section 200.

40. Labor Code section 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

41. Section 11 of the applicable Wage Order states:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

42. At all relevant times, Plaintiff was not subject to a valid on-duty meal period agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class** members were not subject to valid on-duty meal period agreements with Defendants.

43. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)

1 hour work period, as required by Labor Code section 512 and the applicable Wage Order.
 2 Specifically, Plaintiff and **Meal Period Sub-Class** Members were required to keep and monitor their
 3 work radios during their meal and rest breaks. Additionally, Plaintiff and **Meal Period Sub-Class**
 4 Members were constantly interrupted during their meal breaks via radio calls. Next, due to
 5 understaffing and heavy workloads, Plaintiff and **Meal Period Sub-Class** Members were denied the
 6 opportunity to take timely meal periods prior to the completion of their fifth hour of work.
 7 Furthermore, Plaintiff and **Meal Period Sub-Class** Members were not relieved of all work duties
 8 during unpaid meal periods and were interrupted during meal breaks or required to keep working
 9 during meal breaks.

10 44. Plaintiff alleges that, at all relevant times during the applicable limitations period,
 11 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
 12 **Class** members when they worked five (5) hours without clocking out for any meal period. Plaintiff
 13 and **Meal Period Sub-Class** Members were not provided with meal periods of at least thirty (30)
 14 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
 15 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
 16 take their meal periods, or that advised **Meal Period Sub-Class** Members of their meal and rest period
 17 rights; and (3) Defendants' practice of requiring putative class members to continue working through
 18 their meal and rest periods due to the excessive workload.

19 45. Plaintiff alleges that, at all relevant times during the applicable limitations period,
 20 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
 21 **Sub-Class** with a second meal period when they worked shifts of ten (10) or more hours and failed
 22 to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

23 46. Moreover, Defendants written policies fail to inform Meal period Class Members of
 24 their meal period rights under the Labor Code and applicable Wage Orders.

25 47. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
 26 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
 27 regular rates of pay when required meal periods were not provided.

28 48. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of

1 himself and the **Meal Period Sub-Class** members, seeks to recover unpaid premium wages, interest
2 thereon, and costs of suit.

3 49. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
4 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the
5 **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

6 SECOND CAUSE OF ACTION

7 **FAILURE TO PROVIDE REST PERIODS**

8 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

9 **(Plaintiff and Rest Period Sub-Class)**

10 50. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 51. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
13 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
14 Code and the applicable Wage Order.

15 52. Section 12 of the applicable Wage Order imposes an affirmative obligation on
16 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
17 (10) minutes of net rest time for each four (4) hour work period, or major fraction thereof, that must
18 be in the middle of each work period insofar as practicable.

19 53. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
20 employers from requiring employees to work during required rest periods and require employers to
21 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
22 workday that the employee is not provided with the required rest period(s).

23 54. Compensation for missed rest periods constitutes wages within the meaning of Labor
24 Code section 200.

25 55. Labor Code section 1198 makes it unlawful to employ a person under conditions that
26 violate the Wage Order.

27 56. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**

1 with net rest period of at least ten (10) uninterrupted minutes for each four (4) hour work period, or
 2 major fraction thereof, as required by the applicable Wage Order.

3 57. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
 4 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
 5 Defendants' policy of not scheduling each rest period as part of each work shift, including second
 6 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
 7 encouraged employees to take their rest periods, or that properly advised Plaintiff and **Rest Period**
 8 **Sub-Class** Members of their rest period rights; and (3) Defendants' policy and practice of requiring
 9 putative class members to continue working through their rest breaks due to the excessive workload,
 10 including having to keep and monitor their company radios during meal periods and rest breaks.

11 58. Additionally, Plaintiff and **Rest Period Sub-Class** Members were consistently
 12 interrupted during their rest breaks via their radios constantly. Additionally, on shifts that Plaintiff
 13 and **Rest Period Sub-Class** Members worked between ten to twelve hours, Plaintiff and **Rest Period**
 14 **Sub-Class** Members were not given their required third rest break.

15 59. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
 16 members additional premium wages when required rest periods were not provided.

17 60. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
 18 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
 19 costs of suit.

20 61. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
 21 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest**
 22 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

23 THIRD CAUSE OF ACTION

24 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

25 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

26 **(Plaintiff and Hourly Employee Class)**

27 62. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
 28 herein.

63. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

64. Section 2 of the applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

65. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

66. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

67. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest thereon.

68. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

69. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

70. Labor Code section 1198 makes it unlawful for employers to employ employees under conditions that violate the applicable Wage Order.

71. Labor Code section 204 requires employers to pay non-exempt employees their earned wages for the normal work period at least twice during each calendar month on days the employer designates in advance and to pay non-exempt employees their earned wages for labor performed in excess of the normal work period by no later than the next regular payday.

72. Labor Code section 223 makes it unlawful for employers to pay their employees lower

1 wages than required by contract or statute while purporting to pay them legal wages.

2 73. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
3 to pay non-exempt employees overtime wages of no less than one and one-half (1.5) times their
4 respective regular rates of pay for all hours worked in excess of eight (8) hours in one workday, all
5 hours worked in excess of forty (40) hours in one workweek, and/or for the first eight (8) hours
6 worked on the seventh consecutive day of one workweek.

7 74. Labor Code section 510 and Section 3 of the applicable Wage Order also require
8 employers to pay non-exempt employees overtime wages of no less than two (2) times their respective
9 regular rates of pay for all hours worked in excess of twelve (12) hours in one workday and for all
10 hours worked in excess of eight (8) hours on a seventh consecutive workday during the workweek.

11 75. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
12 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
13 working conditions and compensation arrangements.

14 76. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
15 **Employee Class** members for all time worked, including but not limited to, overtime hours at
16 statutory and/or agreed rates.

17 77. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
18 overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful
19 time-rounding policy and practice which rounded down and reduced the actual working hours
20 recorded by Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and
21 generally did so to the detriment of the Plaintiff and **Hourly Employee Class** Members, and these
22 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
23 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
24 Plaintiff and **Hourly Employee Class** Members only for the hours they were scheduled to work,
25 rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is
26 not neutral and results, over time, to the detriment of the Plaintiff and **Hourly Employee Class**
27 Members by systematically undercompensating them.

28 78. Next, Plaintiff and **Hourly Employee Class** Members were also consistently required

1 to perform work, off-the-clock, for which they were not paid wages. Specifically, Plaintiff and
2 **Hourly Employee Class** Members would clock in a before their scheduled shift and would not get
3 compensated from the actual time they clocked in. Additionally, Plaintiff and **Hourly Employee**
4 **Class** Members would be required to put on protective gear, such as steel toe boots, hard hats, and
5 safety gloves prior to clocking in. Finally, Plaintiff and **Hourly Employee Class** Members were
6 required to perform work during unpaid meal periods which they were systemically denied, including
7 having to keep and monitor their company radios during meal periods and rest breaks. The forgoing
8 and uncompensated working time was under the direction and control of Defendants, for which no
9 wages were paid.

10 79. This uncompensated time caused Plaintiff and **Hourly Employee Class** Members to
11 work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week,
12 entitling Plaintiff and **Hourly Employee Class** Members to minimum and overtime wages, which
13 they were systemically denied.

14 80. Defendants also failed to Plaintiff and **Hourly Employee Class** Members overtime
15 wages at the proper and applicable regular rates of pay. Specifically, Plaintiff and **Hourly Employee**
16 **Class** Members earned performance-based non-discretionary bonuses in addition to their hourly pay.
17 However, these supplemental earnings were not accounted for when determining Plaintiff and **Hourly**
18 **Employee Class** Members' regular rates of pay, and respective and proper overtime rates of pay.

19 81. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
20 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
21 full amount of wages earned during each pay period during the applicable limitations period,
22 including overtime wages.

23 82. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
24 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
25 overtime wages, interest thereon and costs of suit.

26 83. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
27 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
28 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO PAY PROPER SICK PAY

(Lab. Code § 246)

(Plaintiff and Sick Pay Class)

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

85. Labor Code Section 246 affords an employee “who works in California for 30 or more days within a year from the commencement of employment [] paid sick days . . . of not less than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.”

86. Additionally, Subsection (l) of Section 246 provides:

For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

87. Defendants had a common policy and practice of systemically failing to pay Plaintiff and **Sick Pay Class** Members the requisite sick time pay in accordance with California Law. Specifically, Plaintiff and **Sick Pay Class** Members worked for Defendants for more than 30 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12 month period of work. Additionally, the sick pay paid to Plaintiff and **Sick Pay Class** Members did not account for the shift differential pay as well as performance-based non-discretionary bonuses, which were never factored into the rate upon which sick pay was accrued and paid.

88. Therefore, **Sick Pay Class** Members are owed the unpaid balance of said wages pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties

pursuant to Labor Code § 558(a).

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

89. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

90. Labor Code section 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

91. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with

1 electronic wage statements retain the ability to easily access the information and convert the electronic
2 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

3 92. Plaintiff is informed and believes that Defendants' failure to provide Plaintiff and
4 **Wage Statement Class** members with accurate written wage statements was intentional in that
5 Defendants have the ability to provide them with accurate wage statements but have intentionally
6 provided them with written wage statements that Defendants have known do not comply with Labor
7 Code section 226(a).

8 93. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
9 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

10 94. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
11 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
12 not included.

13 95. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
14 were not accurately reflected in that: all hours worked, including overtime, were not included.

15 96. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate by the employee" were not accurately reflected in that: all hours worked, including
18 overtime, were not included.

19 97. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
20 Defendants have violated their legal rights to receive accurate wage statements and have misled them
21 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
22 statements has prevented immediate challenges to Defendants' unlawful pay practices, has required
23 discovery and mathematical computations to determine the amount of wages owed, has caused
24 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
25 submission of inaccurate information about wages and deductions to federal and state government
26 agencies.

27 98. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
28 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in

1 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
 2 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
 3 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

6 **(Lab. Code §§ 201-203)**

7 **(Plaintiff and Waiting Time Penalties Sub-Class)**

8 99. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
 9 herein.

10 100. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
 11 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
 12 earned and unpaid before termination or resignation.

13 101. At all relevant times, pursuant to Labor Code section 201, employees who have been
 14 discharged have been entitled to payment of all final wages immediately upon termination.

15 102. At all relevant times, pursuant to Labor Code section 202, employees who have
 16 resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to
 17 payment of all final wages at the time of resignation.

18 103. Plaintiff is informed and believes that, at all relevant times during the applicable
 19 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
 20 members all their final wages in accordance with the Labor Code.

21 104. Plaintiff is informed and believes that, at all relevant times during the applicable
 22 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
 23 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
 24 sections 201 or 202 by failing to timely pay them all final wages.

25 105. Plaintiff is informed and believes, and thereupon alleges that Defendants' failure to
 26 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members has been willful
 27 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
 28 and/or 202 but have intentionally adopted policies or practices that are incompatible with those

1 requirements.

2 106. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
3 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the dates that their
4 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

5 107. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
6 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
7 **Class** members, seeks awards of reasonable attorneys' fees and costs.

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

11 **(Plaintiff and UCL Class)**

12 108. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
13 herein.

14 109. Business and Professions Code section 17200 defines "unfair competition" to include
15 any unlawful business practice.

16 110. Business and Professions Code sections 17203-17204 allow a person who has lost
17 money or property as a result of unfair competition to bring a class action in accordance with Code
18 of Civil Procedure section 382 to recover money or property that may have been acquired from
19 similarly situated persons by means of unfair competition.

20 111. California law requires employers to pay hourly, non-exempt employees for all hours
21 they are permitted or suffered to work, including hours that the employer knows or reasonable should
22 know that employees have worked.

23 112. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND,
24 THIRD, AND FOURTH causes of action herein.

25 113. Plaintiff lost money or property as a result of the aforementioned unfair competition.

26 114. Defendants have or may have acquired money by means of unfair competition.

27 115. Plaintiff is informed and believes, and thereupon alleges that by committing the Labor
28 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,

226.6, 226.7, 246, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, as well as applicable Wage Orders, which make it a misdemeanor to commit the violations alleged herein.

116. Defendants have committed criminal conduct through their policies and practices of, *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay; and proper sick time pay.

117. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes unfair competition within the meaning of Business and Professions Code section 17200 *et seq.* Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of similarly situated persons in a class action proceeding.

118. As a result of Defendants' violations of the Labor Code during the applicable limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

119. Plaintiff is informed and believes that other similarly situated persons have been subject to the same unlawful policies or practices of Defendants.

120. Due to the unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their legal obligations.

121. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates or is considered unlawful under any other state or federal law.

122. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203, Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Wage Orders.

123. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks an order permanently enjoining Defendants, and each of them, and their respective agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

124. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

125. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

126. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of himself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

127. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, et seq.)

128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

129. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12,

1 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, et seq..¹

2 130. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
 3 and other current and former employees, to bring a representative civil action to recover civil penalties
 4 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
 5 maintained as a class action.

6 131. Plaintiff, a former employee against whom Defendants committed one or more of the
 7 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
 8 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
 9 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
 10 Defendants within the state of California from one year prior to the date of this letter and continuing
 11 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
 12 “Aggrieved Employees”)

13 132. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
 14 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
 15 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
 16 investigate.

17 133. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
 18 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 246,
 19 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, and 1198:

- 20 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 246 1174, 1194, and
 21 1198, one hundred dollars (\$100) for each employee per pay period for each
 22 initial violation and two hundred dollars (\$200) for each employee per pay
 23 period for each subsequent violation (penalties set by Labor Code §
 24 2699(f)(2));

25 _____
 26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
 27 Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved
 28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

- 1 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
 2 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 3 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
 4 employee for each initial violation that was neither willful nor intentional, two
 5 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
 6 withheld from each employee, for each initial violation that was either willful
 7 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
 8 five percent (25%) of the amount unlawfully withheld from each employee,
 9 for each subsequent violation, regardless of whether the subsequent violation
 10 was either willful or intentional (penalties set by Labor Code § 210);
- 11 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
 12 employee for each initial violation that was neither willful nor intentional, two
 13 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
 14 the amount unlawfully withheld from each employee, for each initial violation
 15 that was either willful or intentional, and two hundred dollars (\$200) for each
 16 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
 17 from each employee, for each subsequent violation, regardless of whether the
 18 subsequent violation was either willful or intentional (penalties set by Labor
 19 Code § 225.5);
- 20 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
 21 citation, two hundred and fifty dollars (\$250) for each employee for each
 22 violation. Alternatively, if an initial citation or its equivalent occurred before
 23 the filing of this action, one thousand dollars (\$1,000) for each employee for
 24 each violation (penalties set by Labor Code § 226.3);
- 25 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
 26 employee for each initial pay period for which the employee was underpaid,
 27 and one hundred dollars (\$100) for each employee for each subsequent pay
 28 period for which the employee was underpaid (penalties set by Labor Code §

558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;
- g. Restitution;
- h. Declaratory relief;
- i. Pre-judgment interest;
- j. Statutory penalties;
- k. Civil penalties;
- l. Costs of suit;
- m. Reasonable attorneys' fees; and
- n. Such other relief as the Court deems just and proper.

1 Dated: ~~July 30, 2024~~

D.LAW, INC.

Deleted: July 22, 2024

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5 Emil Davtyan
6 David Yeremian
7 David Keledjian
8 ~~David Arakelyan~~
9 Attorneys for Plaintiff
10 MANUEL GONZALES, and the putative class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: ~~July 30, 2024~~ D.LAW, INC.

Deleted: July 22, 2024

Emil Davtyan
David Yeremian
David Keledjian
~~David Arakelyan~~
Attorneys for Plaintiff
~~MANUEL GONZALEZ~~, and the putative class

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