

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

Alvin B. Lindsay (SBN 220236)

a.lindsay@d.law

Melissa Rodriguez (SBN 35271)

m.rodriguez@d.law

880 E Broadway

Glendale, CA 91205

Telephone: (818) 962-6465

Fax: (818) 962-6469

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Case #24CV429229
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Attorneys for Plaintiff JESUS MONTOYA, on behalf
of himself and others similarly situated

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

JESUS MONTOYA , an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

FUJIFILM DIMATIX, INC., a Delaware
stock corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV429229

CLASS ACTION

Assigned for All Purposes To:

Hon. Charles F. Adam

Dept.: 7

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; and
10. Violation of Business & Professions Code § 17200 *et seq*, and
11. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: January 16, 2023
Trial Date: None Set.

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

5 **INTRODUCTION**

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

15 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
16 Defendants in positions generally pertaining to providing installation, maintenance, and repair
17 services in connection with Defendant’s process-related systems and equipment. Plaintiff, and
18 upon information and belief the other similarly situated Employees in the Class, were required to
19 perform work tasks based out of Defendants’ warehouses, locations, and facilities in California.
20 Plaintiff was employed by Defendants as an assembly technician, and Defendants tasked him with
21 duties that included loading and unloading machines, running parts through the machines, and
22 making reports.

23 3. Defendants employed other similarly situated Employees in similar and related
24 positions based out of Defendants’ warehouses, locations, and facilities throughout California,
25 including in the city of Santa Clara. Plaintiff and the other similarly situated Class Members
26 worked at Defendants’ behest without being paid all wages due and without being provided all
27 required breaks. More specifically, Plaintiff and the other similarly situated Class Members were
28 employed by Defendants and (1) shared similar job duties and responsibilities, (2) were subjected

1 to the same policies and practices, and (3) endured similar violations at Defendants' hands.

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

11 5. Defendant FUJIFILM DIMATIX, INC. is a Delaware stock corporation which lists
12 its principal address in Santa Clara, California with the California Secretary of State. It lists
13 several registered corporate agents who list addresses in Sacramento, California, and in
14 Sacramento County. Fujifilm Dimatix lists its type of business as "to engage in any lawful act or
15 activity." The wage statements issued to Plaintiff list "FUJIFILM DIMATIX INC" as his
16 employer with an address in Lebanon, New Hampshire. Fujifilm Dimatix Inc.'s website explains
17 that it is "the world's leading provider of inkjet printheads for commercial and industrial printing.
18 The company's technology innovations and world-class fabrication processes enable high-
19 performance, micro-precision printing and deposition of traditional inks and nano-particulate
20 fluids on many surfaces."

21 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
23 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
24 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
25 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
26 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Santa Clara County
27 and Defendants list a principal address in Santa Clara. Defendants also employ Class Members at
28 locations, warehouses, and facilities in Santa Clara County and throughout California.

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

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

FACTUAL BACKGROUND

9. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class Members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class Members all wages due and owing, including compensation for off-the-clock work, uncompliant

1 meal and rest breaks, and Defendants' failure to furnish accurate wage statements, all in violation
2 of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage
3 Orders.

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

12 11. Plaintiff was generally scheduled to work alternating weeks. Depending on the
13 week, Plaintiff was either scheduled to work for three days or four days, with shift times generally
14 spanning twelve hours from 6:00 p.m. through 6:00 a.m. Plaintiff was generally scheduled to work
15 for twelve hours, but on several occasions, Plaintiff was also required to work longer shifts with
16 an additional hour or two of time if it was approved by Defendants to be paid at overtime premium
17 rates. However, Plaintiff was required by Defendants to endure substantial off-the-clock work
18 before and after his scheduled shift hours, and was not paid for all his hours worked at the correct
19 overtime rates, especially during shifts under a three-day alternative workweek schedule.

20 12. Defendants' policy and practice of requiring systematic off the clock work flowed
21 in part from their unlawful timekeeping procedures. Defendants required timekeeping entries to be
22 inputted into an online platform on the company computer systems by Employees rather than
23 through a timeclock or some other method of recording actual and contemporaneous hours
24 worked. While Defendants required time punch records for shift start and end times and meal
25 period beginning and end times, they were not recorded contemporaneously and instead
26 Defendants merely required Employees to input them by the end of the work week. Plaintiff was
27 therefore compelled to record scheduled shift times rather than actual times when he was on and
28 off the clock, and faced consequences if he were to record all the hours he actually worked.

1 13. Managers also would oftentimes make modifications and adjustments to reflect
2 Plaintiff's shift start and end times and legally compliant meal period beginning and end times.
3 For instance, Plaintiff and Class Members were instructed by managers that they were required to
4 take a one-hour meal period during any given shift, yet Plaintiff recalls that his timesheets often
5 reflected two separate meal periods even though second meal periods were neither offered nor
6 taken. When Plaintiff confronted the manager about the inaccurate punches, the manager asked
7 Plaintiff to send him an email addressing his concerns. Plaintiff sent numerous emails regarding
8 Defendant's timekeeping procedures and requesting timesheet modifications, but Defendants
9 failed to take action to remedy the problem. Instead, the Defendants' manager denied fault and
10 insisted that no mistakes were made. Upon submission of the time entries to managers, there were
11 no other mechanisms in place for Plaintiff and the Class Members ensure that their time records
12 were accurate or not modified or adjusted.

13 14. Additionally, Defendants instructed Plaintiff and the Class Members to input into
14 the timekeeping system that they took a full hour for a meal period and did so before the fifth hour
15 of work as required under the Labor Code and Wage Orders. Although, Plaintiff's work demands
16 oftentimes prevented Plaintiff from taking a full hour break, Defendants instructed Plaintiff and
17 the Class Members to record compliant meal breaks without regard to whether they were actually
18 taken on time or for the full duration or were interrupted by management demands and other work
19 requirements. Additionally, by deducting 30 minutes for a meal period plus an additional 30
20 minutes for an alleged hour-long meal period that was generally not lawfully provided if at all,
21 Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each
22 Employee's daily work shifts. When Plaintiff attempted to record the actual clock-in and clock-out
23 times for his meal period, Managers modified and adjusted any non-compliant timekeeping entries
24 to reflect they were timely or not shortened to avoid incurring and paying meal period premium
25 penalty wages. In these instances during shifts of over ten hours, Defendants were required to
26 provide two, separate 30-minute meal periods, that is one for every five hours of shift hours
27 worked. It is unlawful to combine first and second meal periods and by doing so, Defendants
28 systematically committed second meal period violations during all these effected shifts.

1 Defendants thus also made an unlawful deduction of 30 minutes of hours worked for an alleged
2 hour-long meal period that was provided generally untimely if at all.

3 15. Defendants also required Plaintiff and the Class Members to be prepared to begin
4 work at their scheduled shift start time. However, for Plaintiff and Class Members to do so they
5 had to arrive at the facility well before their scheduled shift start time. Plaintiff's work shifts
6 generally were scheduled to start at 6:00 p.m., and to be prepared to start working then he had to
7 arrive at the facility by at least 10 minutes prior to that scheduled start time. Before they could
8 walk to their workstations, Plaintiff and Class Members were required by Defendants to also
9 undergo a cleanroom donning procedure for protective clothing Defendants required Employees to
10 wear to help avoid cross-contamination. Thus, prior to arriving to his workstation at his scheduled
11 shift time, Plaintiff was required to change out of his clothes and into clean or aseptic garments
12 and remained under Defendants' control during these hours. To avoid overtime, Defendants'
13 managers would also move Plaintiffs' clock-in times to later ones as much as needed to offset any
14 allegedly unapproved overtime. Whether they are "approved" or not by Defendants' managers, if
15 Employees worked overtime hours they must be paid at the correct overtime rates under the Labor
16 Code.

17 16. Overtime hours were generally not allowed, and Plaintiff was often compelled to
18 work many hours off the clock and without compensation to attain the processing and production
19 goals. Defendants also failed to include bonuses and any other form of remuneration Employees
20 received in the regular rate used to calculate and pay the overtime that Defendants did pay

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

1 18. Defendants may attempt to assert they were authorized to require Plaintiff and the
2 Class members to work four days per week for ten-hour days or three days per week for twelve-
3 hour days under an alleged alternative work week schedule. To whatever extent there were lawful
4 alternative workweeks worked by Employees in the Class under such schedules, overtime rates
5 still must be paid for all hours worked over ten on a shift and Defendants failed to do so or to pay
6 double time rates for hours over twelve in a shift where appropriate. However, upon information
7 and belief Defendants have neither conducted the required elections nor reported them to the
8 Department of Industrial Relations as required under Labor Code § 511 and the applicable IWC
9 Wage Orders given there are no listed elections in the Alternative Workweek Elections Database.
10 Therefore, on every shift Plaintiff and the Class members worked, both their regular hours worked
11 and off the clock hours worked combined to well over eight hours in a day and/or 40 hours in a
12 workweek. Given that Defendants failed to conduct required alternative workweek elections but
13 yet still failed to pay overtime rates for all hours worked over eight in a given shift or double time
14 for hours over twelve under unlawful alleged alternative workweek schedules, Plaintiff and the
15 Class members have been required to endure systematic and ongoing failure to pay regular and
16 overtime wages violations at Defendants' hands.

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

24 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
25 the Class Members is and has been a direct consequence of Defendants' unlawful compensation
26 policies and practices, which upon information and belief applied uniformly to the Class Members
27 working based out of Defendants' warehouses, locations, and facilities throughout California. As a
28 result of the above-described unlawful requirements to work off the clock, the failure to accurately

1 record all hours worked and pay wages at the correct regular and overtime rates, and the other
2 wage violations they endured at Defendants' hands, Plaintiff and the Class Members were not
3 properly paid all wages earned and all wages owed to them by Defendants, including when
4 working more than eight hours in any given day and/or more than forty hours in any given week.
5 To the extent Defendants did pay overtime to Plaintiff and the Class members, upon information
6 and belief during pay periods when they worked overtime and received bonuses or shift
7 differentials and other forms of remuneration Defendants failed to include all these forms of
8 remuneration in the regular rate used to calculate and pay overtime.

9 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
10 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
11 hours worked and failing to pay minimum wages for all time worked, as required by California
12 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
13 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
14 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
15 week and double-time rates for all hours worked in excess of twelve hours a day, in violation of
16 Labor Code § 510 and the corresponding sections of IWC Wage Orders. These failures cannot be
17 avoided by Defendants' reliance on any alleged alternative workweek schedules

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

26 23. More specifically, Plaintiff worked shifts that entitled him to at least two meal
27 periods, but as addressed above, Defendants' managers only offered Plaintiff a one-hour meal
28 period per shift. Therefore, to whatever extent Plaintiff and the Class members were provided with

1 a lawful first meal period, they were also thus provided with an unlawful second meal period as
2 required on shifts over ten hours in duration. Defendants also either modified records to reflect
3 two legally compliant meal periods and three rest periods or required Plaintiff and Class Members
4 to do so. However, as addressed above, these time records merely reflected Plaintiff's scheduled
5 shift start times and end times and Employees were also required to record legally compliant meal
6 period start and end times without regard to whether they were timely and uninterrupted and for all
7 required time. To whatever extent there was ever a schedule for meal periods, it went by the
8 wayside quickly as there always seemed to be management and work demands to attend to. This
9 led to systematically late meal periods, if they were provided at all, and on-duty meal periods. The
10 difficult to attain production goals and management expectations also contributed to Employees
11 working through meal periods or not taking them or taking them late so work could be
12 accomplished or they were required to remain under Defendants' control during meal periods.

13 24. Additionally, Defendants instructed Plaintiff and the Class Members to input into
14 the timekeeping system that they took a full hour for a meal period and did so before the fifth hour
15 of work as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff and
16 the Class Members to thus record compliant first meal breaks without regard to whether they were
17 actually taken on time or for the full duration or were interrupted by customer and management
18 demands and other work requirements. In these instances Defendants also committed second meal
19 period violations for unlawfully combining first and second meal periods by failing to provide
20 meal periods during ever five-hour work segment.

21 25. Therefore, meal period violations systematically occurred ongoing throughout all
22 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
23 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day
24 while also committing the above described second meal period violations. To the extent
25 Defendants ever did pay Plaintiff a meal period premium for any of these violations, upon
26 information and belief they failed to do so at the correct hourly rate. Upon information and belief,
27 the other Class Members were subjected to similar unlawful policies and practices and endured
28 similar violations as Plaintiff.

1 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
2 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
3 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
4 Members were required to perform work as ordered by Defendants for more than five hours
5 during a shift without receiving compliant meal periods. Additionally, as addressed above,
6 Defendants followed a practice of requiring off-the-clock work in a manner that would impact
7 when Employees were to receive meal periods and rest breaks and Defendants committed
8 systematic and ongoing second meal period violations on all shifts over ten hours.

9 27. Upon information and belief, Defendants' payroll and timekeeping systems did not
10 automatically generate a meal period premium under Labor Code § 226.7 for meal periods that
11 commenced after five hours into a work shift or in the event the time punch records reflected a
12 meal period of less than thirty minutes or that no second meal period was provided. However,
13 upon information and belief, in the event Defendants did pay any meal period premiums, they did
14 so at the employee's customary regular rate of hourly compensation without including all forms of
15 remuneration in that hourly rate calculation, for example by omitting performance-based bonuses
16 and the like from the rate at which meal premiums were paid.

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

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

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

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

11 (a) Class Members were not provided full thirty-minute duty free meal periods for
12 work days in excess of five hours and were not compensated one hour's wages in lieu thereof, or
13 were not compensated at the correct regular rate of compensation, all in violation of, among
14 others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
15 Order(s);

16 (b) Class Members were not provided second full thirty-minute duty free meal periods
17 for work days in excess of ten hours;

18 (c) Class Members were required to work through at least part of their daily meal
19 period(s);

20 (d) Meal periods were provided after five hours of continuous work during a shift; and

21 (e) Class Members were restricted in their ability to take a full thirty-minute meal
22 period.

23 31. Similar violations resulted from Defendants' failure to authorize and permit
24 Plaintiff and the Class Members to take duty-free, net ten-minute rest breaks for every four hours
25 of shift work, or major fraction thereof. There was an alleged company policy to permit Plaintiff
26 and the Class Members take up to three 15-minute rest breaks during a given shift over ten hours,
27 however, they were often required to remain under Defendants' control and respond to instructions
28 from management and job demands. The alleged company policy was rarely enforced as rest

1 breaks were frequently cut short or skipped in their entirety or Defendants required Employees to
2 remain under their control during rest breaks.

3 32. Rest breaks were not scheduled, and during Plaintiff's entire employment with
4 Defendant, Plaintiff was permitted to take his rest breaks only when he got a chance. Therefore,
5 Plaintiff frequently had to skip out on his legally entitled rest breaks to prioritize work tasks or cut
6 rest breaks short to tackle urgent work and comply with management demands. Nevertheless,
7 Plaintiff was instructed by his managers to record that he took three 15-minute rest breaks at a
8 specific time during his shift. This practice again unlawfully failed to pay Employees for rest
9 break time, which must be compensated at the required regular rate. Additionally, although
10 Defendants were not required to maintain time records for rest breaks, the fact that they did so and
11 maintained them inaccurately has resulted in further violations of the Labor Code, including the
12 record keeping requirements.

13 33. Defendants' uniformly applied policies and practices thus resulted in untimely and
14 shortened or on-duty rest breaks if and when they were authorized and permitted. Plaintiff and the
15 Class Members worked shifts of at least eight hours, which required at least two rest breaks, and
16 consistently worked shifts over ten hours, which required they be authorized and permitted to take
17 at least three rest breaks. Even on the occasions when Defendants authorized and permitted
18 Plaintiff to take a first rest break, he was often forced to skip out on a second or a third break, and
19 those that were provided were often late and generally interrupted by job duties and requirements.

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

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

4 (a) Class Members were required to work without being provided a minimum ten
5 minute rest period for every four hours or major fraction thereof worked and were not compensated
6 one hour of pay at their regular rate of compensation for each workday that a rest period was not
7 provided;

8 (b) Class Members were not authorized and permitted to take timely rest periods for
9 every four hours worked, or major fraction thereof; and

10 (c) Class Members were required to remain on-duty and under Defendants' control
11 during rest periods or otherwise had their rest periods interrupted by work demands.

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

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

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

16 37. As a result of these illegal policies and practices, Defendants also engaged in and
17 enforced the following additional unlawful practices and policies against Plaintiff and the Class
18 Members he seeks to represent:

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

28 38. Defendants have also consistently failed to provide Class Members with timely,

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

18 39. Defendants have thus also failed to comply with Labor Code § 226(a) by
19 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
20 Members, along with the appropriate applicable rates, among other requirements. Plaintiff and
21 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
22 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
23 applicable California IWC Wage Orders by failing to maintain time records showing when the
24 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
25 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
26 payment of wages and accurately reporting total hours worked.

27 40. As addressed in detail above, Defendants required Plaintiff and the Class Members
28 to work hours off the clock for which they were not compensated or paid them at incorrect hourly

1 and overtime rates. They were required to endure off the clock work addressed above during
2 interrupted or otherwise on-duty meal and rest periods and were not provided with sick pay and
3 supplemental sick leave and were subjected to systematic off the clock work. Defendants also
4 failed to pay all overtime premium wages owed for work conducted on a work shift and a workday
5 or failed to pay it at the correct rate, as addressed above. Therefore, Defendants have also followed
6 a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly
7 situated Employees at the time of their termination or within seventy-two hours of their
8 resignation, as required by California wage-and-hour laws, including Labor Code § 203.

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

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

18 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

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

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

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

19 **A. Numerosity**

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

26 **B. Commonality**

27 48. There are questions of law and fact common to the Class that predominate over any
28 questions affecting only individual Class Members. The common questions are numerous and

1 substantial and flow from Defendants' uniform policies and/or practices of violating the California
2 Labor Code addressed above. As such, these common questions predominate over individual
3 questions concerning each individual Class Member's showing as to his or her eligibility for
4 recovery or as to the amount of damages. These common questions of law and fact include:

- 5 a. Whether Defendants failed to pay Employees minimum wages;
- 6 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 7 c. Whether Defendants failed to pay Employees overtime as required under Labor
8 Code § 510;
- 9 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
10 IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay
11 in lieu thereof;
- 12 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
13 Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide
14 premium pay in lieu thereof;
- 15 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
16 providing employees with all required sick days and COVID-19 supplemental sick leave;
- 17 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
18 inaccurate wage statements;
- 19 h. Whether Defendants violated Labor Code § 221;
- 20 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
21 wages and compensation due and owing at the time of termination of employment;
- 22 j. Whether Defendants' conduct was willful;
- 23 k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the
24 IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and
25 work periods;
- 26 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
27 Employees during the relevant time period for all hours worked, whether regular or overtime;
- 28 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all

wages earned at least twice monthly;

n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

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

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

52. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class Members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class Members. Further, as the economic or other loss suffered by vast numbers of Class Members may be relatively small, the expense and burden of individual actions makes it difficult for the Class Members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of

1 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
2 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
3 to vindicate their rights for violations they endured which they would otherwise be foreclosed
4 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

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

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

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

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

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

59. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to

employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wage rate fixed by the commission for work during the relevant period is found in the Wage Orders.

60. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which 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.”

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

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

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

1 64. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
2 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
3 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
4 pay each employee minimum wages.

5 65. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are
6 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
7 interest thereon.

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

11 67. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages
12 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
13 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
14 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
15 members of the Class further request recovery of all unpaid wages, according to proof, interest,
16 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
17 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
18 wage compensation is determined to be owed to the Class Members who have terminated their
19 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
20 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
21 which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely
22 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
23 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
24 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
25 Members are entitled to seek and recover statutory costs.

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 70. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
15 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
16 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
17 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
18 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
19 work in a workweek. To the extent Defendants failed to pay overtime and double time wages as
20 required under Labor Code § 511 and in connection with unlawful alternative workweek schedules
21 that were neither the result of required elections nor recorded with the Department of Industrial
22 Relations, Defendants committed ongoing and systematic violations by failing to pay for all hours
23 worked and failing to pay them at the required regular and overtime rates under the Labor Code.

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

1 work, as detailed above. Defendants' managers also moved hours that should have been paid at
2 overtime premium rates to regular hours or otherwise treated them as regular hours under unlawful
3 and ineffectual alternative workweek agreements.

4 72. Defendants thus had a consistent policy of not paying Employees wages for all
5 hours worked, including hours at their required regular, overtime, and double-time rates.
6 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
7 and/or, modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
8 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
9 the Class Members all earned and owed straight time and overtime wages and other benefits, in
10 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
11 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
12 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
13 employees to work through meal periods or remain under Defendants' control when they were
14 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
15 respond to demands from customers and managers.

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

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

1 75. Additionally, Labor Code § 558(a) provides “any employer or other person acting
2 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
4 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
7 underpaid employee for each pay period for which the employee was underpaid in addition to an
8 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
9 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
10 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
11 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
12 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
13 Code § 558.

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

20 77. Employees have been damaged by these violations of California Labor Code §§
21 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
22 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than
23 \$100 for causing Employees “to work for longer hours than those fixed, or under conditions of
24 labor prohibited by an order of the commission” or if the employer pays “a wage less than the
25 minimum fixed by an order of the commission” or “violates...any provision of this chapter or any
26 order or ruling of the commission.”

27 78. Consequently, pursuant to the California Labor Code, including Labor Code §§
28 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including

1 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
2 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
3 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
4 against Defendants, and each of them, and any additional sums as provided by the Labor Code
5 and/or other statutes.

6 **THIRD CAUSE OF ACTION**

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

8 **(Against All Defendants)**

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

11 80. Employees regularly worked shifts greater than ten and twelve hours. Pursuant to
12 Labor Code § 512, and paragraph 11 of the applicable IWC Wage Order, an employer may not
13 employ someone for a shift of more than five (5) hours without providing him or her with a meal
14 period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without
15 providing him or her with a second meal period of not less than thirty (30) minutes.

16 81. Defendants failed to provide Employees with meal periods as required under the
17 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
18 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
19 provided them after Employees worked beyond the fifth hour of their shifts or Employees
20 otherwise had them shortened and interrupted by work demands and requirements to perform off
21 the clock work and remain under Defendants' control. Defendants also unlawfully failed to
22 provide second meal periods to employees who worked over ten hours by unlawfully combining
23 first meal periods with second meal periods. Employees therefore also were not provided with a
24 second uninterrupted thirty-minute meal period as required by law on shifts of over ten hours. To
25 the extent Defendants attempt to rely on any meal period waivers, upon information and belief
26 they are unenforceable and have not been received from all Class members, and Plaintiff and the
27 Class members cannot waive second meal periods on the shift they regularly worked that spanned
28 over twelve hours. Defendants also unlawfully combined first and second meal periods.

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

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

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

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

86. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of

1 ten minutes net rest time per four (4) work hours.

2 87. Employees consistently worked consecutive four-hour shifts and were generally
3 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
4 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
5 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
6 each consecutive four-hour segment of a work shift, or major fraction thereof, and Defendants
7 failed to provide Employees with timely rest breaks of not less than ten minutes for each
8 consecutive four-hour shift segment. Defendants made minimal efforts to schedule or otherwise
9 authorize and permit Plaintiff and the Class Members to take lawful rest breaks. Employees were
10 often required to work or to otherwise remain under Defendants' control during rest periods,
11 including by responding to work requirements, and had breaks provided untimely as a result of the
12 above described off-the-clock work and management and work demands. Plaintiff and the Class
13 Members were also not permitted to leave their work premises during rest breaks, or were
14 otherwise required to remain under Defendants' control and unable to use their rest break time for
15 themselves and their own purposes.

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

20 89. Defendants failed to authorize and permit Plaintiff and the Class Members to take
21 rest periods, as required by the Labor Code. Defendants, and each of them, have therefore
22 intentionally and improperly denied rest periods to Plaintiff and the Class Members in violation of
23 Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

24 90. Moreover, Defendants did not compensate Employees with an additional hour of
25 pay at each Employee's hourly rate for each day that Defendants failed to provide them with
26 lawful rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the
27 applicable IWC Wage Orders. To the extent Plaintiff and the Class members worked shifts of
28 over ten hours, they were required to receive first, second, and third duty-free and paid rest breaks.

1 To the extent Defendants provided first rest breaks to Employees during a shift, they failed to
2 authorize and permit second and/or third rest breaks.

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

8 **FIFTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 226(a)**
10 **(Against All Defendants)**

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

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

20 94. Defendants failed to provide Plaintiff and the similarly situated Employee Class
21 Members with accurate itemized wage statements in writing, as required by the Labor Code and
22 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
23 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
24 including for all overtime and double time hours worked and for deficient meal periods and rest
25 breaks, all of which Defendants knew or reasonably should have known were owed to the
26 Employees, as alleged above. As addressed above, Defendants systematically failed to pay all
27 required overtime hours on shifts of over eight hours in duration and all double time hours for
28 shifts over twelve hours. Defendants thus failed to list accurate wage rates on wage statements

1 issued to Employees for their hours worked and failed to accurately list all hours worked due to
2 unlawful off the clock work Defendants required from them.

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

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

1 standard] would be able to readily ascertain the information without reference to other documents
2 or information.

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

11 98. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
12 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
13 Class suffered injuries, including among other things confusion over whether they received all
14 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
15 them to make mathematical computations to analyze whether the wages paid in fact compensated
16 them correctly for all hours worked.

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

23 **SIXTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 221**
25 **(Against All Defendants)**

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

28 101. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 Additionally, pursuant to California Labor Code § 204, applicable regulations, and public policy,
3 employers must timely pay employees for all hours worked. Defendants failed to do so.

4 102. Defendants unlawfully received and/or collected wages from the Employees in the
5 Class by requiring off the clock work, by failing to pay and miscalculating overtime, and by
6 automatically deducting time for meal periods when they were not lawfully provided and not
7 paying one hour of pay at the regular rate of compensation for every meal and rest period violation
8 endured by Plaintiff and the other Class Members, as alleged above. In addition to failing to
9 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 additional minutes for
10 hour long meal periods that were rarely provided or otherwise received without violation. Thus, by
11 deducting 30 minutes for a meal period plus an additional 30 minutes for an alleged hour-long
12 meal period that was generally not lawfully provided if at all, Defendants effectively and
13 unlawfully deducted at least 30 minutes of hours worked from each Employee’s daily work shifts.
14 In order to avoid overtime, Defendants’ managers would also move Plaintiffs’ clock in times to
15 later ones as much as needed to offset any unapproved overtime or to make a late meal period
16 timely. Finally, Defendants operated under unlawful alternative workweek schedules that
17 systematically failed to pay overtime hours and to pay them at the correct overtime rates. By not
18 compensating Employees for all hours worked, and failing to compensate them at the required
19 regular and overtime rates of pay, Defendants unlawfully deducted wages earned in violation of
20 Labor Code § 221.

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

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

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

28 105. Labor Code § 204 instructs that: “All wages, ...earned by any person in any

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

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

19 107. Defendants violated Labor Code § 204 by systematically refusing to timely pay
20 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
21 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
22 payday for the period involved, not less than the applicable minimum wage for all hours worked in
23 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
24 hours than those fixed by the order or under conditions of labor prohibited by the order is
25 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
26 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
27 penalties under paragraph 20 of the applicable IWC Wage Orders.

28 108. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to

1 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
2 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
4 applicable IWC Wage Orders.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 203**
7 **(Against All Defendants)**

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

10 110. Plaintiff and numerous Class Members are no longer employed by Defendants;
11 they either quit Defendants' employ or were fired therefrom.

12 111. As addressed in detail above, Defendants failed to pay these Employees all wages
13 due and certain at the time of termination or within seventy-two hours of resignation.

14 112. The wages withheld from these Employees by Defendants remained due and owing
15 for more than thirty days from the date of separation from employment. Additionally, Defendants
16 failed to pay Plaintiff his final check at the time of termination.

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

24 114. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
25 are required "to pay each employee, on the established payday for the period involved, not less
26 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
27 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
28 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members

1 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
2 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
3 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
4 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
5 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
6 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
7 “violates...any provision of this chapter or any order or ruling of the commission.”

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

12 **NINTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

21 118. During the course of Plaintiff’s and Employees’ employment, Defendants
22 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
23 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
24 premium pay as discussed above and failing to document and pay for actual hours worked.

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

28 120. Defendants have maintained a common unlawful policy and practice of failing to

1 accurately record all hours worked and all meal period start and end times and by adjusting or
2 otherwise rounding and shaving them down. Defendants also manipulated timekeeping records to
3 reflect less time worked or to shift time to avoid premiums.

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

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

8 **TENTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

11 123. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
13 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
14 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
15 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
16 the public interest within the meaning of Code of Civil Procedure § 1021.5.

17 124. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
19 relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

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

ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

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

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

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

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

1 137. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
4 addressed underlying claims and seeking penalties as specified by the applicable corresponding
5 provisions, including as follows:

6 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
7 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
8 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
9 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
10 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
11 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
12 to Labor Code § 2699(g)(1);

13 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
14 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
15 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
16 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
17 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
18 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
19 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1);

21 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
22 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
23 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
24 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
26 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
27 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
28 providing inaccurate wage statements and failing to maintain records as required under Labor

Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

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

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

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

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

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work

1 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
2 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
3 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
4 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
5 each pay period for which the employee was underpaid in addition to an amount sufficient to
6 recover underpaid wages...

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

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

15 139. Plaintiff has exhausted his administrative remedies by submitting a certified letter
16 to the LWDA and Defendants on January 16, 2024 (LWDA Case No. LWDA-CM-1005290-24)
17 addressing in detail the specific provisions of the Labor Code Defendants have violated and
18 addressing the facts and legal theories to support the alleged violations and requested penalties.
19 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
20 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties
21 under the PAGA for the violations addressed herein and in the PAGA Notice letter and the
22 original Complaint.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff prays for the following relief:

- 25 1. For an order certifying this action as a class action;
26 2. For compensatory damages in the amount of the unpaid minimum wages for work
27 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
28 the filing of this action, as may be proven;

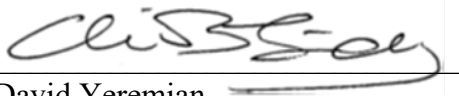
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
13. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
14. For other wages and penalties under the Labor Code as may be proven;
15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
16. For penalties under Labor Code § 558, as may be proven;
17. For all general, special, and incidental damages as may be proven;

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- 18. For an award of pre-judgment and post-judgment interest;
- 19. For an award providing for the payment of the costs of this suit;
- 20. For an award of attorneys' fees; and
- 21. For such other and further relief as this Court may deem proper and just.

DATED: June 6, 2024

D.LAW, INC.

By 
David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff JESUS MONTOYA
and all others similarly situated

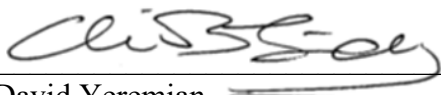
DEMAND FOR JURY TRIAL

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

DATED: June 6, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff JESUS MONTOYA
and all others similarly situated

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

Eric D. Distelburger
ericdistelburger@paulhastings.com
 Elena R. Baca
elenabaca@paulhastings.com
 Chris A. Jalian
chrisjalian@paulhastings.com
Paul Hastings LLP
 101 California Street, 48th Floor
 San Francisco, CA 94111

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

Executed on June 6, 2024, at Glendale, California.

formal.


Sasha Zambrano