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 on behalf of himself and all others similarly situated

FILED
 Superior Court of California
 County of Los Angeles
08/12/2024

David W. Slayton, Executive Officer / Clerk of Court
 By: R. Lozano Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

THOMAS GENE NAPPO, an individual, on
 behalf of himself and others similarly situated,

Plaintiff,

vs.

FINISHMASTER, INC., an Indiana
 corporation; LKQ AUTO PARTS OF
 CENTRAL CALIFORNIA, INC., a California
 Corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No.: 24STCV14107

CLASS ACTION

Assigned for All Purposes To:
 Hon. Stuart M. Rice
 Dept.: 1

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability under Labor Code § 226.7;
4. Rest-Break Liability under Labor Code § 226.7;
5. Violation of Labor Code § 226(a) and 226.2;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: June 6, 2024
 Trial Date: None Set

1 Plaintiff THOMAS GENE NAPPO (hereinafter “Plaintiff”), on behalf of himself and all
2 other similarly situated non-exempt, hourly employees employed by Defendants in California
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants 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 four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt hourly employees by Defendants FINISHMASTER,
9 INC., an Indiana corporation; LKQ AUTO PARTS OF CENTRAL CALIFORNIA, INC., a
10 California Corporation; and DOES 1 through 50 (all defendants being collectively referred to
11 herein as “Defendants”). Plaintiff alleges that Defendants violated various provisions of the
12 California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
13 California Business & Professions Code, and seeks redress for these violations.

14 2. Plaintiff worked as an hourly, non-exempt Delivery Driver based out of one of
15 Defendants’ facilities and locations in San Leandro, Alameda County, California. He and the other
16 Class members were employed by Defendants as non-exempt hourly employees at Defendants’
17 locations and facilities throughout California, including in positions related to providing customer
18 service, pick up and deliver orders, warehouse work, receiving, stocking shelves, mixing paint,
19 and other job duties related to providing autobody parts, paints, and supplies to Defendants’
20 customers. Plaintiff worked at Defendants’ behest without being paid all wages due and without
21 being provided all required breaks. More specifically, Plaintiff and the other similarly situated
22 Class members were employed by Defendants and shared similar job duties and responsibilities,
23 were subjected to the same policies and practices, and endured similar violations at the hands of
24 Defendants as the other Employees who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and failed to record accurate time worked by these Employees, failed to pay them at the
27 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
28 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that

1 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
2 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
3 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
4 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
5 applicable paragraphs of the IWC Wage Orders.

6 4. Defendant FINISHMASTER, INC., ("FINISHMASTER") is an Indiana
7 corporation which lists its principal address with the California Secretary of State in Indianapolis,
8 Indiana and does not list a California address. It lists its type of business as "automotive and
9 industrial paint products." Upon information and belief, FINISHMASTER operates or has
10 operated throughout California, including by operating locations in Los Angeles County and
11 throughout the Alameda and San Francisco County areas. Plaintiff's W-2 lists FINISHMASTER
12 as the employer and lists its address in Indianapolis, Indiana. Upon information and belief, the
13 Wage Statements issued to Plaintiff listed FINISHMASTER as the employer, with the same
14 Indianapolis, Indiana address.

15 5. Defendant LKQ AUTO PARTS OF CENTRAL CALIFORNIA, INC. ("LKQ
16 AUTO PARTS") is a California Corporation that lists its principal address in Chicago, Illinois and
17 does not list a California Office address. It lists its type of business as: "Recycled & Aftermarket
18 Auto/Truck/RV Parts & Accs." Upon information and belief, LKQ AUTO PARTS acquired
19 FINISHMASTER or is otherwise a related or successor entity of some sort, and the two entities
20 jointly employed or employ Plaintiff and the Class members or else did so in succession during
21 the relevant time period. Upon information and belief, LKQ also operates other facilities and
22 maintains locations throughout California where Employees are or have been based out of or
23 employed, including in Los Angeles County and in Alameda and San Francisco Counties. The
24 website for LKQ AUTO PARTS explains its "commitment to continuous improvement, finding
25 creative solutions, adapting to the ever-changing competitive landscape, and providing aftermarket
26 and recycled auto parts."

27 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought

as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles County, where Defendants operate and provide services to California customers. Neither Defendant lists an address with the California Secretary of State and both operate or have operated throughout California, including in Los Angeles County.

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, is 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, 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

1 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
2 Commission (“IWC”). During the period of four years prior to the filing of this action through its
3 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
4 worked were not paid at the appropriate minimum, regular and overtime rates, including for meal
5 period and rest break premium payments. Plaintiff also contends that Defendants failed to pay
6 Plaintiff and the Class members all wages due and owing, including by miscalculating wages
7 owed and by requiring off the clock work, failing to provide meal and rest breaks, and failing to
8 furnish accurate wage statements and timely pay all wages owed, all in violation of various
9 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

10 10. During the course of Plaintiff and the Class members’ employment with
11 Defendants, they were not paid all wages they were owed, including for all work performed
12 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at the
13 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
14 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
15 exempt, hourly employees providing customer service, picking up and delivering orders,
16 performing warehouse work, receiving, stocking shelves, mixing paint, working at the retail
17 counter, and other job duties related to providing autobody parts, paints, and supplies to
18 Defendants’ customers based out of Defendants’ facilities in California.

19 11. Plaintiff worked based out of Defendants’ facilities in San Leandro, Alameda
20 County, California as a Delivery Driver. His duties included providing customer service, picking
21 up and delivering orders, warehouse work, receiving, stocking shelves, mixing paint, working at
22 the retail counter, and other job duties related to providing autobody parts and services to
23 Defendants’ customers. Plaintiff generally worked at least 40 hours per week, five shifts per
24 week. Plaintiff’s scheduled hours were generally from 8:00 a.m. through 5:00 p.m. Plaintiff was
25 required to and did supply his own mobile phone for performing his duties.

26 12. Defendants’ timekeeping systems were faulty and inaccurate, and contributed to the
27 systematic off the clock work Plaintiff and the Class members endured, including for the minutes
28 Employees spent waiting to record their time before and after work shifts and during meal breaks.

1 For example, when Plaintiff was driving during a delivery, he was unable to clock in or clock out.
2 Instead, Plaintiff's manager required him to manually input his hours and breaks at the end of his
3 shift. This in turn resulted in untimely and unlawfully shortened meal periods as Plaintiff and the
4 Class members were required to work during breaks or otherwise remain under Defendants'
5 control. Employees were unable to use their break time to do as they saw fit because they were
6 required by Defendants to remain responsive to work demands and customer inquiries and calls.
7 Employees were therefore required to remain under Defendants' control to respond as needed to
8 work demands even if they were in the middle of an unpaid meal period. Defendants failed to
9 record any such time as hours worked in their timekeeping systems.

10 13. In addition to unpaid hours worked during their meal periods, Plaintiff and the
11 Class Members were required to complete job duties or otherwise remain under Defendants'
12 control before and after their scheduled shift hours. For example, Plaintiff was repeatedly
13 required to engage in off-the-clock work which included shipping confirmed packages for thirty
14 minutes before clocking in. Accordingly, Defendants systematically failed to pay Employees for
15 all their hours worked and failed to pay for all such hours worked at the required rates of pay.
16 Perpetrating these wage payment violations allowed Defendants to paint a picture of compliance
17 by conforming timekeeping records to scheduled work hours rather than contemporaneously
18 reflecting the actual hours Employees worked.

19 14. Plaintiff and the Class members were sometimes asked to work shifts over eight
20 hours in a day and to work over forty hours in a work week, but they were not paid at the
21 appropriate overtime rate for all such hours, including by being required to perform work duties
22 and tasks without pay and while off-the-clock. In these instances, Plaintiff and the Class members
23 began incurring overtime hours before Defendants recognized and began paying any overtime
24 hours worked by virtue of the systematic off the clock work. As a result, Plaintiff and the Class
25 members were not paid at the correctly calculated overtime rate for all their overtime hours
26 worked or otherwise worked overtime hours during their employment with Defendants for which
27 they were not compensated, in violation of the California Labor Code.

28 15. When the Employees in the Class did work overtime, they were not compensated at

1 the required and correct rate to the extent Defendants failed to incorporate bonuses and other
2 additional forms of remuneration they received into the regular rate of pay used to calculate and
3 pay overtime. Defendants did this, upon information and belief, in connection with other
4 Employees in a concerted effort to underpay wages to Plaintiff and the other Class members.

5 16. Employees were therefore not paid for all their hours worked at the required
6 minimum, overtime and double time wage rates due to Defendants' policy and practice of
7 requiring work off the clock and without pay or failing to pay for all hours worked at the correct
8 rates of pay. With work shifts generally scheduled for eight hours or more, this unpaid off the
9 clock work resulted in Plaintiff and the Class members working past eight hours on a shift, which
10 required that they be paid at the correct overtime rate of 1.5 times their regular rate. Therefore,
11 Plaintiff and Class members were required to work without pay or were underpaid for the hours
12 they actually worked. Defendants thus systematically underpaid Plaintiff and the Class members
13 by failing to pay them at the required overtime rates for all hours over eight in a work shift or
14 over forty in a work week, and all hours over twelve in a day at the required double time rate.
15 Upon information and belief, the Class members were bound by similar scheduling and work
16 policies which Defendants required them to follow and endured similar violations at Defendants'
17 hands as Plaintiff.

18 17. Defendants have either failed to maintain timekeeping records for Plaintiff that
19 would permit Plaintiff to discover the nature and extent of the underpayment of wages, the off the
20 clock work Defendants required, and the actual hours worked or have otherwise declined to
21 produce them to Plaintiff in response to a timely and lawful request. By failing to pay for all
22 hours worked, Defendants have committed knowing and intentional ongoing violations of the
23 record keeping requirements under the Labor Code §§ 226 and 1174.

24 18. As a result of the above-described unlawful requirements to work off the clock, to
25 work without payment and the failure to accurately record all hours worked and unlawful
26 rounding and time shaving, and the other wage violations they endured at Defendants' hands,
27 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
28 them by Defendants, including when working more than eight hours in any given day and/or

1 more than forty hours in any given week. As a result of Defendants' unlawful policies and
2 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
3 adequately and completely compensated, in addition to the hours they were required to work off
4 the clock at their regular rates.

5 19. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
6 the Class members is and has been a direct consequence of Defendants' unlawful compensation
7 policies and practices, which upon information and belief applied uniformly to the Class
8 members working at Defendants' locations and facilities. As a result of the above-described
9 unlawful requirements to work off the clock and regular rate miscalculation, the failure to
10 accurately record all hours worked, pay all bonuses and all wages at the correct rates, and the
11 other wage violations they endured at Defendants' hands, Plaintiff and the Class members were
12 not properly paid all wages earned and all wages owed to them by Defendants, including when
13 working more than eight hours in any given day and/or more than forty hours in any given week.

14 20. Therefore, from at least four years prior to the filing of this lawsuit and continuing
15 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
16 hours worked, and failing to pay minimum wages as required by California law. Also, from at
17 least four years prior to the filing of this lawsuit and continuing to the present, Defendants had a
18 consistent policy or practice of failing to pay Employees overtime compensation at premium
19 overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and
20 double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor
21 Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants paid
22 Plaintiff and the Class members were paid bonuses, and other forms of remuneration above and
23 beyond their normal rate of pay upon information and belief Defendants miscalculated and
24 therefore underpaid any overtime they paid during these pay periods by failing to include all
25 forms of remuneration in the regular rate used to calculate and pay overtime.

26 21. Defendants also failed to provide Plaintiff and the Class members with their
27 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
28 eight hours. Demanding workloads contributed to Defendants' common policy of failing to

1 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
2 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
3 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
4 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

5 22. More specifically, Plaintiff worked shifts that entitled him to at least one meal
6 period, but Defendants' managers required Plaintiff and the Class members to prioritize work
7 over taking proper meal periods. In fact, Defendants made no effort to even schedule or otherwise
8 account for time for Plaintiff and the Class members to use for duty-free, net thirty minute meal
9 periods. To the extent Defendants required Plaintiff to work over ten hours on a work shift,
10 Defendants also failed to provide second meal periods and Defendants have produced no
11 evidence of premium wage payments for meal period violations under Labor Code 226.7. To the
12 extent Defendants have paid any such premiums, upon information and belief they failed to
13 include all forms of remuneration, including bonuses and shift differentials, in the regular rate at
14 which Defendants paid the premiums.

15 23. Therefore, meal period violations systematically occurred throughout all of
16 Plaintiff's work shifts as Defendants failed to provide a lawful meal period or penalty payment.
17 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
18 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
19 premium payment. Upon information and belief, the other Class members were subjected to
20 similar unlawful policies and practices and endured similar violations as Plaintiff.

21 24. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
24 members were required to perform work as ordered by Defendants for more than five hours
25 during a shift without receiving compliant meal periods. Additionally, as addressed above,
26 Defendants followed a practice of requiring off the clock work and rounding and time shaving in
27 a manner that would impact when Employees were to receive meal periods and rest breaks and
28 required them to respond to work calls and inquiries and other demands during breaks, thus

1 leading to further violations.

2 25. Defendants appear to recognize and accept their unlawful policies, as Plaintiff's
3 wage statements evidence Defendant paying meal period premium payments under Labor Code §
4 226.7 to Plaintiff. As addressed above, Defendants committed similar and ongoing violations by
5 failing to include all forms of remuneration in the regular hourly rate at which they paid the
6 premiums to Plaintiff and Class members.

7 26. Defendants thus followed uniformly applied policies of not providing all required
8 meal periods to their Employees. Meal periods were often not properly provided, as work
9 demands impermissibly shortened their breaks. Even when Plaintiff and the Class members were
10 able to take a meal period, it was generally interrupted by work duties or was taken after the fifth
11 hour of work. Additionally, as addressed above, Defendants followed a practice of requiring off
12 the clock work in a manner that would impact when Employees were to receive meal periods and
13 rest breaks, thus leading to further violations.

14 27. As a result, Defendants' failure to provide Plaintiff and the Class members with all
15 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
16 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
17 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
18 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
19 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
20 policies and practices. On the occasions when Plaintiff and the Class members were provided with
21 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
22 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
23 occurred in one or more of the following manners:

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

- 1 (b) Class members were not provided second full thirty-minute duty free meal
2 periods for work days in excess of ten hours;
- 3 (c) Class members were required to work through at least part of their daily
4 meal period(s);
- 5 (d) Meal periods were provided after five hours of continuous work during a
6 shift; and
- 7 (e) Class members were restricted in their ability to take a full thirty-minute
8 meal period and were not permitted to leave their work premises during
9 meal periods and were otherwise required to remain under Defendants'
10 control during meal periods.

11 28. Similar violations resulted from Defendants' failure to authorize and permit
12 Plaintiff and the Class members to take duty-free, net ten-minute rest breaks for every four hours
13 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
14 were either not authorized permitted the opportunity to take a rest break, or were required to
15 remain under Defendants' control and respond to instructions from management and job demands
16 if and when they even attempted to take one. Upon information and belief, Defendants thus also
17 failed to authorize and permit employees to leave the premises during rest breaks, evidencing
18 Defendants' policy and practice of requiring Plaintiff and the Class members to remain under
19 their control during required off-duty rest break times.

20 29. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
21 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
22 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
23 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
24 during the relevant period, meaning Defendants' rest break policy was not to schedule or
25 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
26 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
27 on shifts over ten hours. Given the work demands, understaffing, and pressure from Defendants'
28 management, Plaintiff and the Class members were compelled to not take rest breaks despite

1 working extended shifts. Defendants have produced no evidence of any payments for rest break
2 violations under Labor Code § 226.7. To the extent Defendants have paid any such premiums,
3 upon information and belief they failed to include all forms of remuneration in the regular rate at
4 which Defendants paid the premium.

5 30. Defendants' uniformly applied policies and practices thus resulted in untimely and
6 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
7 members worked shifts of at least eight hours, which required at least two rest breaks, and often
8 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
9 when Defendants authorized and permitted Plaintiff to take a first rest break, he was not
10 permitted to take a second or a third break, and those that were provided were often late and
11 generally interrupted by job duties and requirements. Employees were also not permitted to take
12 any separate cooldown periods.

13 31. During rest and cooldown periods, employers must relieve employees of all duties
14 and relinquish control over how employees spend their time. Plaintiff and the Class members
15 were and are under Defendants' control when they are working through rest breaks. Defendants
16 have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff
17 and the Class members. Plaintiff and the Employees in the Class were thus not authorized and
18 permitted to take lawful rest periods, were systematically required by Defendants to work through
19 or during breaks, and were not provided with one hour's wages in lieu thereof. Plaintiff and the
20 Class members were also required to remain on-duty during breaks or portions of their breaks,
21 thus making them either untimely or shortened and on-duty, and they were also prevented from
22 leaving the premises and otherwise remain under Defendants' control during rest breaks under
23 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in
24 one or more of the following manners:

- 25 (a) Class members were required to work without being provided a minimum
26 ten minute rest period for every four hours or major fraction thereof worked
27 and were not compensated one hour of pay at their regular rate of
28 compensation for each workday that a rest period was not provided, and to

1 the extent Defendants paid any premiums, they failed to include all forms of
2 remuneration in the regular rate used to calculate and pay them.

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

5 (c) Class members were required to remain on duty and under Defendants'
6 control during rest periods or otherwise had their rest periods interrupted by
7 work demands.

8 32. From at least four years prior to the filing of this lawsuit and continuing to the
9 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
10 deducting the Employees' earned wages by requiring off the clock work during breaks and before
11 and after work shifts and by miscalculating the regular rate and accordingly underpaying overtime
12 wages and meal and rest break premiums. By not compensating Employees for all hours worked
13 and at the correct rates, Defendants unlawfully deducted wages earned by and owed to Plaintiff
14 and the Class members, in violation of Labor Code § 221.

15 33. Defendants also violated California Labor Code § 246 by not providing all
16 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
17 provides that an Employee who "works in California for the same employer for 30 or more days
18 within a year from the commencement of employment is entitled to paid sick days as specified in
19 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
20 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
21 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
22 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
23 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
24 leave to the Class members during the relevant time period, including by failing to provide two
25 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
26 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
27 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
28 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or

1 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
2 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.”
3 Plaintiff accordingly seek this relief available for Defendants’ failure to provide Employees with
4 all their required and earned sick days and all their COVID-19 supplemental sick leave in
5 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
6 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
7 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

8 34. Upon information and belief, Defendants also failed to provide Employees such as
9 Plaintiff at the time of his employment and thereafter with written notice complying with all the
10 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
11 shall provide to each employee a written notice, in the language the employer normally uses to
12 communicate employment-related information to the employee, containing” specific required
13 information. Upon information and belief, Defendants failed to provide this information to the
14 Class members as required under Labor Code § 2810.5. Defendants were required to provide
15 Plaintiff and the aggrieved employee Class members certain specific information upon hiring
16 pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such
17 information when he was hired, or have failed to produce it, and upon information and belief
18 Defendants committed similar violations in connection with similarly situated and aggrieved
19 Class members.

20 35. As a result of these illegal policies and practices, Defendants also engaged in and
21 enforced the following additional unlawful practices and policies against Plaintiff and the Class
22 members he seeks to represent:

- 23 (a) failing to pay all wages owed to Class members who either were discharged,
24 laid off, or resigned in accordance with the requirements of Labor Code §§
25 201, 202, 203;
- 26 (b) failing to pay all wages owed to the Class members twice monthly in
27 accordance with the requirements of Labor Code § 204;

- 1 (c) failing to pay Class members all wages owed, including all meal and rest
2 period premium wages, and failing to pay them at the regular rate of
3 compensation;
- 4 (d) failing to maintain accurate records of Class members' hours worked and
5 earned wages and meal periods in violation of Labor Code §§ 226 and
6 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 7 (e) failing to produce timekeeping records in response to Plaintiff's timely and
8 lawful request to receive them under these authorities.

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

26 37. Defendants also provided Plaintiff and the Class members with wage statements
27 that failed to report all hours worked accurately, and applicable hourly rates for all hours worked.
28 For the same reasons as explained above, Plaintiff and the Class members were provided with

1 unlawful wage statements that failed to reflect all wages earned and all hours worked and failed to
2 pay for all overtime hours or failed to pay overtime wages at the correct overtime premium rate,
3 and Defendants miscalculated meal and rest break premiums, and sick time if and when they did
4 pay them. Defendants followed this unlawful policy and practice even though both Plaintiff and
5 Defendants were aware that Plaintiff and the Class members worked more total hours or earned
6 more wages than were reflected on the wage statements, including overtime hours, and were
7 underpaid by regular rate miscalculation. Plaintiff and the Employees in the Class were unable to
8 discern from their wage statements alone the actual hours they worked in total during a pay period
9 and the rates they were paid for those hours worked.

10 38. Defendants have thus also failed to comply with Labor Code § 226(a) by
11 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
12 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
13 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
14 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
15 applicable California IWC Wage Orders by failing to maintain time records showing when the
16 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
17 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
18 payment of wages and accurately reporting total hours worked.

19 39. Defendants also required Plaintiff and the Class members to work hours off the
20 clock for which they were not compensated. They were required to endure off the clock work
21 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
22 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
23 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
24 work shift and a work day or failed to pay it at the correct rate, as addressed above. Therefore,
25 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
26 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
27 two hours of their resignation, as required by California wage-and-hour laws, including Labor
28 Code § 203.

1 40. Plaintiff has also requested records from Defendants and they have failed to
2 constructively respond or to fully respond. Therefore, Plaintiff also asserts that Defendants have
3 had a consistent policy of denying Plaintiff and Class members the right to inspect and receive all
4 of their payroll records, timecards, and personnel records.

5 41. Additionally, from at least four years prior to the filing of this lawsuit and
6 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
7 incur necessary business expenses in the course of performing their required job duties without
8 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
9 calls from management. Additionally, Plaintiff and the Class Members were required to wear
10 uniforms and were required to clean and maintain the uniforms without reimbursement from the
11 Defendants. Plaintiff and the Class members must be reimbursed for these necessary business
12 expenses under Labor Code § 2802, and Defendants systematically failed to do so.

13 42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
14 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.2,
15 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
16 1194, 1194.2 1197, 1198, 1198.5, 1199, 2698 et. seq., 2802, 2810.5, and California Code of
17 Regulations, Title 8, section 11000 *et seq.*

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

22 **CLASS ALLEGATIONS**

23 44. Plaintiff brings this class action on behalf of himself and all others similarly
24 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
25 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
26 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
27 determined by the Court (“the Class Period”), and who have been employed as non-exempt hourly
28 employees within the State of California.” This definition includes Employees in positions related

1 to providing customer service, picking up and delivering orders, warehouse work, receiving,
2 stocking shelves, mixing paint, and other job duties related to providing autobody parts, paints,
3 and supplies to Defendants' customers. Further, Plaintiff seeks to represent the Subclasses
4 composed of and defined as follows:

5 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
6 compensated for all hours worked for Defendants and bonuses at the applicable minimum wage.

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

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

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

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

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

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

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

1 j. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
2 Class members who, within the applicable limitations period, were denied the right to inspect and
3 receive all their payroll records, timecards, and personnel records.

4 k. Subclass 10. Payroll Records Subclass. All Class members who were subject to
5 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
6 by California wage-and-hour laws.

7 l. Subclass 11. Expense Reimbursement Subclass. All Class members who incurred
8 necessary and reasonable expenses in connection with performing their job duties for Defendants
9 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

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

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

1 records for Plaintiff and the Class members that Defendants are required to maintain under
2 California law.

3 **A. Numerosity**

4 48. The potential members of the Class as defined are so numerous that joinder of all
5 the Class members is impracticable. While the precise number of Class member has not been
6 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
7 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
8 Class definition within the State of California. Plaintiff alleges that Defendants' employment
9 records will provide information as to the number and location of all Class members.

10 **B. Commonality**

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

- 17 a. Whether Defendants failed to pay Employees minimum wages, including for all
18 hours worked;
- 19 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 20 c. Whether Defendants failed to pay Employees overtime as required under Labor
21 Code § 510;
- 22 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
23 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
24 premium pay in lieu thereof;
- 25 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
26 Orders, by failing to authorize and permit Employees to take requisite rest breaks
27 or provide premium pay in lieu thereof;
- 28 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with

1 inaccurate wage statements and wage statements that omitted many of the Section
2 226(a) requirements.

3 g. Whether Defendants violated Labor Code § 221;

4 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
5 wages and compensation due and owing at the time of termination of employment;

6 i. Whether Defendants' conduct was willful;

7 j. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the
8 IWC Wage Orders by failing to maintain accurate records of Class members'
9 earned wages and work periods;

10 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
11 Employees during the relevant time period for all hours worked, whether regular or
12 overtime;

13 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
14 wages earned at least twice monthly;

15 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
16 business expenses incurred by Employees;

17 n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
18 providing employees with all required sick days and COVID-19 supplemental sick
19 leave;

20 o. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

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

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

24 **C. Typicality**

25 50. The claims of the named Plaintiff are typical of those of the other Employees. The
26 Employee Class members all sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
28 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

1 the off the clock work and meal and rest violations he was required to endure are typical of those
2 of the other Class members.

3 **D. Adequacy of Representation**

4 51. Plaintiff will fairly and adequately represent and protect the interest of the
5 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
6 experienced and competent in litigating employment class actions.

7 **E. Superiority of Class Action**

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

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

24 54. Class action treatment will allow those persons similarly situated to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
27 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
28 set forth the subject and nature of the instant action. The Defendants' own business records can be

1 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
2 that any further notice is required additional media and/or mailings can be used.

3 55. Defendants, as prospective and actual employers of the Employees in the Class,
4 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
5 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
6 Employees as well as the effect of any alleged arbitration agreements that may have been forced
7 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
8 and policies, most notably intentionally refusing to pay for all hours actually worked which should
9 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
10 agreements and policies and practices on the Employees and Class as a whole.

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

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO PAY MINIMUM WAGES**
20 **(Against All Defendants)**

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

23 58. Defendants failed to pay Employees minimum wages for all hours worked.
24 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
25 would work hours, earn bonuses, and not receive wages, including as alleged above in
26 connection with off the clock work, including all the time required to remain on duty and under
27 Defendants' control during breaks and due to the work demands placed upon them by
28 Defendants' management and by paying what should have been overtime hours as regular hours.

1 Defendants' uniformly applied policies required systematic off the clock work and underpayment
2 of all wages owed to Employees over a period of time, while benefiting Defendants. During the
3 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
4 Class members, including by requiring systematic off the clock. To the extent any local wage
5 ordinances were also applicable to paying the employees an hourly rate above the minimum
6 wage rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform
7 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the
8 Class as a whole, as a result of implementing a uniform policy and practice that denied accurate
9 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

15 60. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
16 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
17 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
18 applicable minimum wage rate fixed by the commission for work during the relevant period is
19 found in the Wage Orders.

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

26 62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
27 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
28 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage

1 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
2 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
3 the absence of a contractually agreed upon one.

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

13 64. As a direct result of Defendants' unlawful wage practices as alleged herein,
14 Plaintiff and the other members of the Class did not receive the correct minimum wage
15 compensation for their time worked for Defendants, including by not receiving wages for all rest
16 periods.

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

21 66. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
22 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
23 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
24 pay each employee minimum wages.

25 67. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
26 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
27 interest thereon.

28

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

71. California Labor Code § 1194 provides that “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.” The action may be maintained directly against the employer in an employee’s name without first filing a

1 claim with the Division of Labor Standards and Enforcement.

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

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

16 74. Defendants thus had a consistent policy of not paying Employees wages for all
17 hours worked, including hours at their required regular, overtime, and double-time rates.
18 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
19 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
20 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
21 Class members all earned and owed straight time and overtime wages and other benefits, in
22 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
23 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
24 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
25 employees to work through meal periods or remain under Defendants' control when they were
26 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
27 respond to demands from customers and managers.

28 75. As a direct result of Defendants' unlawful wage practices as alleged herein, the

1 Plaintiff and the other members of the Class did not receive the correct wage compensation for
2 their time worked. Pursuant to California Labor Code § 1194.2, Plaintiff and class members are
3 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest
4 thereon.

5 76. During the Class Period, Plaintiff and the other members of the Class were paid
6 less for time worked than they were entitled to, constituting a failure to pay all earned wages. By
7 virtue of Defendants' unlawful failure to accurately pay all earned compensation to Plaintiff and
8 the other members of the Class for the true time they worked, Plaintiff and the other members of
9 the Class have suffered and will continue to suffer an economic injury in amounts which are
10 presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

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

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

15 81. Employees have been damaged by these violations of California Labor Code §§
16 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
17 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
18 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
19 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
20 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
21 any order or ruling of the commission.”

22 82. Consequently, pursuant to the California Labor Code, including Labor Code §§
23 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
24 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
25 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
26 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
27 against Defendants, and each of them, and any additional sums as provided by the Labor Code
28 and/or other statutes.

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 85. Defendants failed to provide Employees with meal periods as required under the
13 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
14 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
15 provided them after Employees worked beyond the fifth hour of their shifts or Employees
16 otherwise had them shortened and interrupted by work demands and requirements to perform off
17 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
18 on the occasions when Employees worked more than ten hours in a given shift, they did so
19 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

24 87. Moreover, Defendants failed to compensate Employees for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
26 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
2 period premiums, they upon information and belief underpaid them by miscalculating the regular
3 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
4 compensate the Employees in the Class for each meal period not provided or inadequately
5 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
6 Wage Order.

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

13 **FOURTH CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

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

21 91. Employees consistently worked consecutive four hour shifts and were generally
22 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
23 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
24 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
25 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
26 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
27 to authorize and permit Plaintiff and the Class members to take lawful rest breaks. Employees
28 were often required to work or to otherwise remain under Defendants' control during rest periods,

1 including by responding to work requirements, and had breaks provided untimely as a result of the
2 above described off the clock work.

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

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

10 94. Defendants failed to authorize and permit Plaintiff and the Class members to take
11 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
12 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
13 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
14 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
15 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
16 compensation by not including all forms of remuneration in it. Defendants thus failed to
17 compensate the Employees in the Class for each rest period not provided or inadequately
18 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
19 Wage Order.

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

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

98. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, hours worked, bonuses earned, and hourly rates, and did not provide premium pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to Employees. Moreover, the wage statements Defendants provided to the Employees in the Class failed to list or to accurately list the wage rates or the hours worked at those rates during the pay period which led to the calculated pay listed by Defendants without any further detail.

99. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal

1 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
3 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
4 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
5 members with such timely and accurate wage and hour statements.

6 100. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
7 and intentional failure to provide them with the wage and hour statements as required by law and
8 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
9 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
10 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
11 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
12 wage statement alone one or more of the following: (i) The amount of the gross wages or net
13 wages paid to the employee during the pay period or any of the other information required to be
14 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
15 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
16 wages paid to the employee during the pay period, (iii) The name and address of the employer
17 and, (iv) The name of the employee and only the last four digits of his or her social security
18 number or an employee identification number other than a social security number. For purposes
19 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
20 objective standard] would be able to readily ascertain the information without reference to other
21 documents or information.

22 101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
23 are required "to pay each employee, on the established payday for the period involved, not less
24 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
25 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
26 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
27 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
28 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable

1 IWC Wage Orders.

2 102. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
3 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
4 Class suffered injuries, including among other things confusion over whether they received all
5 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
6 them to make mathematical computations to analyze whether the wages paid in fact compensated
7 them correctly for all hours worked.

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

14 **SIXTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 221**
16 **(Against All Defendants)**

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

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

24 106. Defendants unlawfully received and/or collected wages from the Employees in the
25 Class by implementing a policy understating the hours worked by Employees and by rounding and
26 requiring off the clock work, and as otherwise alleged above.

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

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

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

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

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

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

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

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

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

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

16 114. Plaintiff and numerous Class members are no longer employed by Defendants; they
17 either quit Defendants' employ or were fired therefrom.

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

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

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

1 118. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
2 are required “to pay each employee, on the established payday for the period involved, not less
3 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
4 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
5 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
6 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
7 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
8 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
9 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
10 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
11 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
12 “violates...any provision of this chapter or any order or ruling of the commission.”

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

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5** 19 **(Against All Defendants)**

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

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

26 122. During the course of Plaintiff’s and Employees’ employment, Defendants
27 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
28 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and

1 premium pay as discussed above and failing to document and pay for actual hours worked.

2 123. Defendants are also required by the California Labor Code § 1198 and the
3 applicable Wage Order to maintain a tracking system that accurately records the times during
4 which Employees work.

5 124. Defendants have maintained a common unlawful policy and practice of failing to
6 accurately record all hours worked and all meal period start and end times.

7 125. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
8 knew wages to be due but failed to pay them.

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

11 **TENTH CAUSE OF ACTION**

12 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

13 **(Against All Defendants)**

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

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

21 129. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
22 or his or her representative, has the right to inspect and receive a copy of the personnel records
23 that the employer maintains relating to the employee's performance or to any grievance concerning
24 the employee. Under this statute, upon written request from a current or former employee or his or
25 her representative, an employer must make the contents of those personnel records available for
26 inspection or provide a copy of the personnel records to the current or former employee, or his or
27 her representative, not later than thirty calendar days from the date the employer receives the
28 written request, subject to some limited exceptions. Failure to comply with these requests allows

1 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
2 226(f).

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

6 131. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
7 produce the required records requested by Plaintiff.

8 132. On information and belief, Defendants' failure to provide Plaintiff with all of his
9 requested employment records is not an isolated incident, but was instead consistent with
10 Defendants' policy and practice that applied to Plaintiff and Employees.

11 133. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
12 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

13 134. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of
14 seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other
15 Class members similarly situated are similarly entitled.

16 **ELEVENTH CAUSE OF ACTION**
17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**
18 **(Against All Defendants)**

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

21 136. Plaintiff is informed and believes and based thereon alleges that throughout the
22 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
23 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
24 in responding to calls from management, the use of his personal computer to conduct al business
25 for the Defendants, and the purchase of internet service. Plaintiff and the Class members must be
26 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
27 systematically failed to do so.

28 137. Defendants thus followed a uniform policy and practice of failing to reimburse

1 Employees for these necessary work related expenses or losses incurred in direct discharge of their
2 job duties during employment with Defendants and at the direction of the Defendants pursuant to
3 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

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

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

17 **TWELFTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

26 141. Plaintiff is a "person" within the meaning of Business & Professions Code
27 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
28 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

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

17 **THIRTEENTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

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

26 152. In failing to pay Aggrieved Employees minimum wages and overtime, not
27 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
28 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,

1 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
2 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
3 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
4 paragraph 7 of the applicable IWC Wage Orders.

5 153. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
6 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
7 including the penalty provisions, without limitation, based, inter alia, on the following California
8 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
9 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

10 154. More specifically, after complying with the notice procedures of Labor Code §
11 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
12 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-
13 addressed underlying claims and seeking penalties as specified by the applicable corresponding
14 provisions, including as follows:

15 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
16 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
17 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
18 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
19 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
20 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
21 to Labor Code § 2699(g)(1);

22 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
23 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
24 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
25 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
26 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
27 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
28 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs

1 pursuant to Labor Code § 2699(g)(1);

2 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
3 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
4 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
5 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
6 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
7 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
8 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
9 providing inaccurate wage statements and failing to maintain records as required under Labor
10 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
11 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
12 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
13 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
14 citation, ...";

15 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
16 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
17 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
18 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
19 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
20 § 2699(g)(1);

21 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
22 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
23 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
24 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
25 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
26 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
27 pursuant to Labor Code § 2699(g)(1);

28 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For

1 Defendants' failure to provide Employees with all their required and earned sick days and all their
2 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
3 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
4 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
5 Labor Code § 2699(g)(1); and

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

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

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

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

28 (c) The civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.

2 156. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
3 the LWDA and Defendants on June 6, 2024 (LWDA-CM-1032505-24) addressing in detail the
4 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
5 theories to support the alleged violations and requested penalties. The LWDA has not provided
6 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
7 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
8 addressed herein and in the PAGA Notice letter and the original Complaint.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays for the following relief:

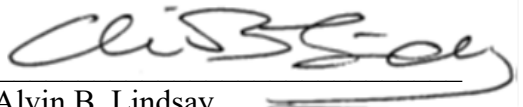
- 11 1. For an order certifying this action as a class action;
- 12 2. For compensatory damages in the amount of the unpaid minimum wages for work
13 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
14 the filing of this action, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 17 4. For compensatory damages in the amount of all unpaid wages, including overtime
18 and double-time pay, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Employees
20 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
21 years prior to the filing of this action, as may be proven;
- 22 6. For compensatory damages in the amount of the hourly wage made by Employees
23 for each day requisite rest breaks were not provided or were deficiently provided where no
24 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
25 be proven;
- 26 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 27 8. For restitution and/or damages and penalties for Defendants' failure to pay all
28 wages due twice monthly under Labor Code § 204, as may be proven;

- 1 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
2 for all class members in violation of Labor Code § 221, as may be proven;
- 3 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
4 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 5 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 6 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
- 7 13. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 8 14. For penalties under Labor Code § 558, as may be proven;
- 9 15. For damages and restitution for failure to reimburse all reasonable and necessary
10 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
- 11 16. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 13 17. For an order enjoining Defendants and their agents, servants, and employees, and
14 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
15 duties adumbrated in this Complaint;
- 16 18. For other wages and penalties under the Labor Code as may be proven;
- 17 19. For all general, special, and incidental damages as may be proven;
- 18 20. For an award of pre-judgment and post-judgment interest;
- 19 21. For an award providing for the payment of the costs of this suit;
- 20 22. For an award of attorneys' fees; and
- 21 23. For such other and further relief as this Court may deem proper and just.

22
23 DATED: August 12, 2024

D.LAW, INC.

24
25 By


Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Thomas Gene
Nappo and the putative class

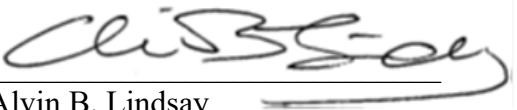
DEMAND FOR JURY TRIAL

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

DATED: August 12, 2024

D.LAW, INC.

By



Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Thomas Gene
Nappo and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

On August 12, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

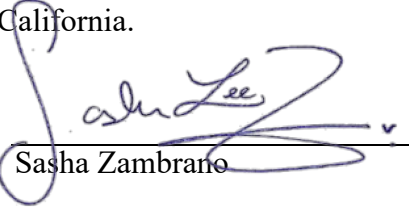
Lonnie D. Giamela
lgiamela@fisherphillips.com
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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

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

Executed on August 12, 2024, at Glendale, California.


Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES Branch Name: Spring Street Courthouse Mailing Address: 312 North Spring Street City, State and Zip Code: Los Angeles CA 90012	
SHORT TITLE: THOMAS GENE NAPPO vs FINISHMASTER, INC., et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 24STCV14107

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
Reference Number: 10371581_2024_08_12_11_18_17_432_3
Submission Number: 24LA01355834
Court Received Date: 08/12/2024
Court Received Time: 11:22 am
Case Number: 24STCV14107
Case Title: THOMAS GENE NAPPO vs FINISHMASTER, INC., et al.
Location: Spring Street Courthouse
Case Type: Civil Unlimited
Case Category: Other Employment Complaint Case
Jurisdictional Amount: Over \$35,000
Notice Generated Date: 08/12/2024
Notice Generated Time: 1:08 pm

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Amended Complaint	Accepted
Notice of Posting of Jury Fees	Accepted
Notice (name extension)	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect

Contact: Legal Connect

Phone: (800) 909-6859