

Daniel J. Hyun (State Bar No. 309184)
daniel@torusllp.com

David Alami (State Bar No. 314628)
david@torusllp.com

TORUS LLP
2 Park Plaza, Ste. 1260
Irvine, California 92614
Telephone: (949) 590-4122
Facsimile: (949) 528-2596

Attorneys for Plaintiff Dennis Diaz

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

DENNIS DIAZ, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

PRECISION WATERJET INC.; OC DEBURR
LLC; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2024-01421315-CU-OE-CXC

Assigned for all purposes to:
Hon. William D. Claster, Dept. CX101

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or Compensation;
3. Failure to Permit Rest Periods or Provide Compensation;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Waiting Time Penalties;
6. Violation of the Unfair Competition Law; and
7. Violation of the Private Attorneys General Act of 2024

Action Filed: August 26, 2024
Trial Date: None Set

DEMAND FOR JURY TRIAL

1 Plaintiff DENNIS DIAZ (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this First Amended Class and Representative Action Complaint (“Complaint”) against
3 Defendants PRECISION WATERJET INC., OC DEBURR LLC, and DOES 1 through 50, inclusive
4 (collectively, “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this putative class action pursuant to Code of Civil Procedure Section
7 382 against Defendants, on behalf of himself individually and a putative class of California citizens
8 who are and were employed by Defendants as non-exempt employees throughout California during
9 the Class Period (collectively the “Class” or “Class Members”). The term Class Period is defined as
10 four (4) years and 178 days prior to the filing of this action to the date of class certification, inclusive
11 of any period of time in which the applicable statutes of limitation were tolled between April 6, 2020
12 and October 1, 2020, pursuant to the California Rules of Court, Appendix I, Emergency Rule 9.

13 2. Plaintiff also brings this representative action pursuant to the PAGA, Labor Code
14 sections 2698 *et seq.*, against Defendants, on behalf of himself individually and other aggrieved
15 employees who are and were employed by Defendants throughout California during the PAGA Period.
16 The term PAGA Period is defined as one (1) year prior to Plaintiff’s notice of Labor Code violations
17 to the Labor and Workforce Development Agency (“LWDA”) and Defendants until judgment.

18 3. Defendant PRECISION WATERJET INC. is a California corporation and supplier of
19 end-to-end commercial machining and manufacturing solutions to customers across a wide range of
20 industries.

21 4. Defendant OC DEBURR LLC owns and operates a staffing company and is a
22 California limited liability company.

23 5. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour
24 violations under the California Labor Code, the Industrial Welfare Commission (“IWC”) Wage
25 Orders, and California Business and Professions Code that have damaged Plaintiff and Class
26 Members, and contribute to Defendants’ deliberate unfair competition.

27 6. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated
28 and continue to violate state wage and hour laws by, among other things:

- (a) failing to pay all wages (including minimum, regular, and overtime wages);
- (b) failing to provide lawful meal periods or compensation in lieu thereof;
- (c) failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- (d) failing to provide accurate itemized wage statements; and
- (e) failing to pay all wages due upon separation of employment.

7. Plaintiff seeks monetary relief against Defendants on behalf of himself and the putative class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys' fees, costs, and penalties pursuant to Labor Code Sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2810.3 and California Code of Civil Procedure Section 1021.5.

JURISDICTION AND VENUE

8. This is a class action pursuant to California Code of Civil Procedure Section 382 and representative action pursuant to Labor Code Sections 2698 *et. seq.* ("PAGA"). The monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

9. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

10. This Court has jurisdiction over all Defendants because, upon information and belief, they have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court under Code of Civil Procedure Sections 395(a) and 395.5 because, upon information and belief, Defendants reside, transact business, maintain offices, and/or have an agent or agents in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

12. Plaintiff is a California citizen. Defendants employed Plaintiff as a non-exempt employee within one (1) year of the filing of this action. Plaintiff's job duties consist of, *inter alia*, operating forklifts to transport structures, deburring steel and aluminum structures, and preparing structures for painting.

13. Plaintiff is informed, believes and thereon alleges that, at all relevant times Defendant Precision Waterjet Inc. ("PW") supplier of end-to-end commercial machining and manufacturing solutions to customers across a wide range of industries. PW was and is a California corporation with its principal place of business located in Anaheim, California. PW was a "client employer" within the meaning of Labor Code Section 2810.3. Plaintiff is further informed, believes and thereon alleges that, at all relevant times, PW regularly conducted and conducts business within the State of California and derives substantial revenues from services performed in California. Plaintiff is informed, believes and thereon alleges that, at all relevant times, PW was and is an employer subject to California state wage and hour laws.

14. Plaintiff is informed, believes and thereon alleges that, at all relevant times Defendant OC Deburr LLC ("OC Deburr"), formerly known as OC Labor & Staffing LLC, owns and operates a staffing company in California. OC Deburr was and is a California limited liability company with its principal place of business located in Anaheim, California. Plaintiff is informed, believes and thereon alleges that OC Deburr supplied PW with workers to perform labor within PW's usual course of business. OC Deburr was a "labor contractor" within the meaning of Labor Code Section 2810.3. Plaintiff is further informed, believes and thereon alleges that, at all relevant times, OC Deburr regularly conducted and conducts business within the State of California and derives substantial revenues from services performed in California. Plaintiff is informed, believes and thereon alleges that, at all relevant times, OC Deburr was and is an employer subject to California state wage and hour laws. At all relevant times, OC Deburr issued wage statements to Plaintiff.

15. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

1 16. Defendants continue to employ non-exempt employees within California.

2 17. Defendant DOES 1 through 50, are sued under fictitious names pursuant to Code of
3 Civil Procedure Section 474 because Plaintiff does not know their true names or capacities. Plaintiff
4 will seek leave of court to amend this Complaint and serve such fictitiously named Defendants when
5 their names and capacities are ascertained.

6 18. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or
7 were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant
8 times.

9 19. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all
10 respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
11 plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
12 to the other Defendants.

13 20. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
14 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
15 the wages, hours, and working conditions of Plaintiff. Furthermore, each Defendant in all respects
16 acted as the employer and/or joint employer of Plaintiff and the Class Members.

17 21. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
18 omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through
19 50, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or partner for the
20 other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and
21 all Defendants were in accordance with, and represent, the official policy of Defendants.

22 22. At all relevant times, Defendants, and each of them, acted within the scope of such
23 agency or employment, or ratified each and every act or omission complained of herein. At all relevant
24 times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other
25 Defendants in proximately causing the damages herein alleged.

26 23. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
27 in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions,
28 occurrences, and transactions alleged herein.

CLASS ALLEGATIONS

24. Plaintiff brings this class action pursuant to Code of Civil Procedure Section 382 on behalf of himself and all others similarly situated who were injured by Defendants' violations of the Labor Code, Business and Professions Code Sections 17200, *et seq.*, and IWC Wage Orders during the Class Period.

25. Plaintiff's proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly employed by Defendants as non-exempt employees throughout the state of California within four (4) years and 178 days prior to the commencement of this action to the date of class certification, and inclusive of any period of time in which the applicable statute of limitations were tolled between April 6, 2020 and October 1, 2020, pursuant to the California Rules of Court, Appendix I, Emergency Rule 9.

26. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All Class Members who separated from their employment with Defendants at any time within three (3) years prior to the filing of this action to the date of class certification ("Subclass" or "Waiting Time Subclass").

27. Members of the Class and Subclass described above will be collectively referred to as "Class Members."

28. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish additional subclasses, or modify or re-define any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

29. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable.

30. **Commonality:** This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure Section 382 because there are common questions of law and fact as to the Class Members that predominate over any questions affecting only individual

members including, but not limited to, the following:

- (a) Whether Defendants paid Plaintiff and Class Members all wages (including minimum, regular, and overtime wages) for all hours worked;
- (b) Whether Defendants required Plaintiff and Class Members to work off-the-clock without compensation;
- (c) Whether Defendants provided Plaintiff and Class Members with compliant meal periods or paid compensation in lieu thereof;
- (d) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and Class Members or paid compensation in lieu thereof;
- (e) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;
- (f) Whether Defendants failed to timely pay Class Members all wages due immediately upon termination or within 72 hours of resignation;
- (g) Whether Defendants' conduct was willful or reckless; and
- (h) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code Sections 17200, *et seq.*

31. There is a well-defined community of interest. Further, Plaintiff and Class Members have suffered common injuries as a result of Defendants' systemic employment policies and practices. Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly. In addition, answers to common questions raised in this Complaint will advance resolution of each individual Class Member's claims.

32. **Numerosity:** The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than 100 individuals.

33. **Ascertainability:** The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

34. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the

1 Class Members because Defendants' failure to comply with the provisions of California's wage and
2 hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained
3 by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and
4 are caused by Defendants' common course of conduct as alleged herein.

5 35. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all
6 Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain
7 full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as
8 proposed class counsel, are competent and experienced in litigating large employment class actions
9 and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
10 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs
11 that have been and will be necessarily expended for the prosecution of this action for the substantial
12 benefit of the Class Members.

13 36. **Superiority:** The nature of this action makes use of class action adjudication superior
14 to other methods. A class action will achieve economies of time, effort, and expense as compared with
15 separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in
16 the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and
17 is empowered to, fashion methods to efficiently manage this case as a class action.

18 37. **Public Policy Considerations:** Employers in the State of California violate
19 employment and labor laws every day. Current employees are often afraid to assert their rights out of
20 fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they
21 believe their former employers might damage their future endeavors through negative references
22 and/or other means. Class actions provide class members who are not named in the complaint with a
23 type of anonymity that allows for the vindication of their rights while affording them privacy
24 protections.

25 GENERAL ALLEGATIONS

26 38. At all relevant times mentioned herein, Defendants employed Plaintiff and other
27 persons as non-exempt employees at Defendants' locations within California. Defendants employed
28 Plaintiff in a non-exempt position during his employment and continue to employ other non-exempt

1 employees within California.

2 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were
4 knowledgeable about California's wage and hour laws, employment and personnel practices, and the
5 requirements of California law.

6 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
7 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
8 financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so
9 all in order to increase Defendants' profits.

10 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
11 have known that Plaintiff and Class Members were entitled to receive at least minimum wages, wages
12 at their regular rate of pay, and overtime wages, and that they were not receiving minimum, regular,
13 and overtime wages for all work that was required to be performed. Plaintiff is informed and believes,
14 and thereon alleges, that Plaintiff and Class Members regularly worked in excess of eight (8) hours in
15 a workday, 10 hours in a workday, and/or over 40 hours per workweek. Specifically, in violation of
16 the Labor Code and IWC Wage Orders, Defendants failed to pay for off-the-clock work, including
17 time spent waiting in line to clock in due to Defendants' malfunctioning fingerprint timekeeping
18 system as well as waiting for other employees to clock in for their shifts. As such, Defendants failed
19 to pay Plaintiff and other Class Members minimum, regular, and overtime wages for all hours worked
20 in violation of the Labor Code and IWC Wage Orders.

21 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
22 have known that Plaintiff and Class Members were entitled to receive a timely, off-duty, uninterrupted
23 30-minute meal period for every five (5) hours of work, or payment of one (1) additional hour of pay
24 at their regular rate of pay when they did not receive a compliant meal period. In violation of the
25 Labor Code and IWC Wage Orders, Plaintiff and Class Members had their meal periods missed, late,
26 interrupted, rounded, shortened, automatically deducted, on-duty, and/or restricted to the worksite due
27 to Defendants' excessive work demands, understaffing, policies, and practices. In addition, Plaintiff's
28 and Class Members' meal periods were regularly taken after the fifth hour of work due to Defendants'

1 scheduling practices, understaffing and busy workload. Defendants also failed to provide second meal
2 periods when Class Members worked in excess of 10 hours in a workday. Defendants failed to
3 compensate Plaintiff and other Class Members with an additional hour of pay at their regular rate for
4 every day in which they suffered a meal period violation. As such, Defendants failed to provide
5 Plaintiff and other Class Members all required meal periods or premium pay, in violation of the Labor
6 Code and IWC Wage Orders.

7 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
8 have known that Plaintiff and Class Members were entitled to receive a 10-minute, off-duty,
9 uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of one
10 (1) additional hour of pay at their regular rate of pay when they were not permitted to take a compliant
11 rest period. In violation of the Labor Code and IWC Wage Orders, Defendants failed to provide
12 compliant rest breaks to Plaintiff and Class Members due to its excessive work demands,
13 understaffing, policies, and practices as mentioned above. As such, Plaintiff and Class Members
14 regularly had their rest breaks missed, shortened, late, on-duty, restricted to the worksite, and/or
15 interrupted. In addition, Defendants failed to provide third rest breaks when Plaintiff and Class
16 Members worked in excess of 10 hours in a workday. Further, Defendants failed to provide rest breaks
17 during the middle of each work period. Defendants also failed to compensate Plaintiff and other Class
18 Members with an additional hour of pay at their regular rate for every day in which they suffered a
19 rest period violation. As such, Defendants failed to provide Plaintiff and other Class Members all
20 required rest periods or premium pay, in violation of the Labor Code and IWC Wage Orders.

21 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
22 have known that Waiting Time Subclass Members who separated from their employment with
23 Defendants during the statutory period were entitled to timely payment of all wages due. In violation
24 of the Labor Code and IWC Wage Orders, Waiting Time Class Members did not receive payment of
25 all wages owed upon separation within the permissible time period due to, *inter alia*, Defendants'
26 failure to pay all wages including minimum, straight time, and overtime wages, and failure to pay meal
27 and rest period premiums to Class Members.

28 45. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should

1 have known that Plaintiff and Class Members were entitled to receive complete and accurate wage
2 statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were
3 not furnished with complete and accurate wage statements that show all of the information required
4 by Labor Code Section 226, including, but not limited to, the gross and net wages earned, the total
5 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number
6 of hours worked at each hourly rate.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES**

9 **(AGAINST ALL DEFENDANTS)**

10 46. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
11 fully set forth herein.

12 47. At all times herein relevant, Defendants had a duty to comply with Labor Code Sections
13 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable
14 local minimum wage ordinances in effect throughout California.

15 48. Labor Code Section 204 and the IWC Wage Orders require timely payment of all
16 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
17 designated in advance by the employer as the regular paydays. All wages in earned in excess of the
18 normal work period must be paid no later than the payday for the next regular payroll period.

19 49. Labor Code Section 206 provides that in case of a dispute over wages, the employer
20 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
21 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

22 50. The IWC Wage Orders define “hours worked” as “the time during which an employee
23 is subject to the control of an employer and includes all time the employee is suffered or permitted to
24 work, whether or not required to do so.”

25 51. Labor Code Section 227.3 requires the payment of vested vacation pay.

26 52. Labor Code Sections 246, 246.5, and 248.5 provide for minimum requirements and
27 protections with respect to sick days.

28 53. Labor Code Section 510 and the IWC Wage Orders require that employers pay

1 employees for all overtime hours at a rate of one and one-half times the employee's regular rate of pay
2 for hours worked in excess of eight (8) hours in one (1) workday, 40 hours in one (1) workweek, and
3 after the first eight hours on the seventh consecutive workday in one (1) workweek. Labor Code
4 Section 510 and the IWC Wage Orders further require that employers pay employees double their
5 regular rate of pay for hours work in excess of 12 hours in a workday and after eight hours on the
6 seventh consecutive workday in one (1) workweek. Labor Code Section 510 requires payment of
7 overtime wages at one and one half times the "regular rate of pay," which includes all forms of
8 remuneration earned by the employee.

9 54. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid to
10 all employees in California for all hours worked. Local minimum wage ordinances, may provide for
11 higher minimum wage rates that must be paid to employees for all hours worked in those locales where
12 each local ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay less than
13 the state or local minimum wage, whichever is higher, for any hour of work.

14 55. Labor Code Section 1194 requires that employers pay employees at least the legal
15 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
16 Labor Code Section 1194 further authorizes any employee receiving less than the legal minimum wage
17 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
18 along with interest thereon, reasonable attorneys' fees and costs of suit.

19 56. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

21 57. Labor Code Section 1198 prohibits employers from employing for longer hours or less
22 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
23 the Labor Commissioner.

24 58. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
25 all wages due including for off-the-clock work, among other things.

26 59. In violation of California law, Defendants have knowingly and willfully refused to
27 perform their obligations and compensate Plaintiff and Class Members for all wages earned as alleged
28 above.

1 60. Defendants' failure to pay Plaintiff and Class Members all earned minimum, regular,
2 and overtime wages in accordance with Labor Code Sections 204, 206, 510, 1182.12, 1194, 1194.2,
3 1197, and 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances
4 in effect throughout California, Plaintiff and Class Members are entitled to recover the full amount of
5 unpaid wages, liquidated damages, prejudgment interest, and statutory penalties, along with attorneys'
6 fees and costs in amounts that will be established at trial.

7 61. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
8 conduct described herein, have committed an "intentional theft of wages in an amount greater than
9 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
10 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
11 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
12 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
13 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
14 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
15 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
16 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
17 California Penal Code section 496(c).

18 **SECOND CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

21 62. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
22 fully set forth herein.

23 63. At all relevant times, Defendants had a duty to comply with Labor Code Sections 226.7
24 and 512, and the applicable IWC Wage Orders.

25 64. Labor Code Section 512 and the IWC Wage Orders prohibit an employer from
26 employing any person for a work period of more than five (5) hours per day without providing the
27 employee with a meal period of not less than 30 minutes (commencing before the employee's fifth
28 hour of work), except that if the total work period per day is no more than six (6) hours, the meal

1 period may be waived by mutual consent of the employer and employee. A second meal period of not
2 less than 30 minutes is required if an employee works more than 10 hours per day and must begin
3 before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours,
4 the second meal period may be waived by mutual consent of the employer and employee, but only if
5 the first meal period was not waived. An employer must relieve an employee of all duties during meal
6 periods.

7 65. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all
8 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period
9 and counted as time worked."

10 66. Labor Code Section 226.7(b) and the IWC Wage Orders prohibit an employer from
11 requiring any employee to work during a meal period mandated by any California statute, regulation,
12 standard or order. If an employer fails to provide an employee with a meal period in accordance with
13 state law, Labor Code Section 226.7(c) and the IWC Wage Orders require that the employer pay the
14 employee one (1) additional hour of pay at the employee's regular rate of compensation for each
15 workday that the meal period is noncompliant.

16 67. During the relevant time period, Plaintiff and Class Members did not receive compliant
17 meal periods for working more than five (5) hours and/or 10 hours per workday. Specifically, meal
18 periods were late, interrupted, rounded, auto-deducted, on-duty, short, missed, and/or restricted to the
19 worksite. In addition, Defendants failed to provide second meal periods to Plaintiff and Class Members
20 when they worked in excess of 10 hours in a workday.

21 68. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
22 meal period premiums for noncompliant meal periods pursuant to Labor Code Section 226.7(b) and
23 the applicable IWC Wage Order.

24 69. As a result of Defendants' failure to provide compliant meal periods and pay meal
25 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
26 Code Sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
27 wages and compensation.

28 70. Because Plaintiff and Class Members were and/or are entitled to such meal periods or

1 “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to
2 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
3 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

4 71. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
5 conduct described herein, have committed an “intentional theft of wages in an amount greater than
6 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
7 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within
8 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
9 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
10 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
11 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
12 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
13 recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to
14 California Penal Code section 496(c).

15 72. Also, pursuant to Code of Civil Procedure Section 1021.5, Plaintiff will seek attorneys’
16 fees and costs from Defendants in an amount subject to proof and approved by the Court.

17 **THIRD CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
21 fully set forth herein.

22 74. At all relevant times, Defendants had a duty to comply with Labor Code Section 226.7
23 and the applicable IWC Wage Orders.

24 75. The IWC Wage Orders require employers to authorize and permit all employees to take
25 10-minute duty-free rest periods for each four (4) hours worked, or major fraction thereof.

26 76. If an employer fails to provide an employee with a rest period in accordance with
27 California law, Labor Code Section 226.7(c) and the IWC Wage Orders require that the employer pay
28 the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each

1 workday that the rest period is noncompliant.

2 77. During the relevant time period, Defendants did not implement a compliant rest break
3 policy and/or practice. Consequently, Plaintiff and Class Members did not receive a 10-minute rest
4 period for every four (4) hours worked or major fraction thereof because rest breaks were interrupted,
5 missed, late, shortened, on-duty, and/or restricted to the worksite.

6 78. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
7 rest period premiums for noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the
8 applicable IWC Wage Order.

9 79. As a result of Defendants' failure to provide compliant rest periods and pay rest period
10 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
11 Sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
12 and compensation.

13 80. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
14 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
15 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
16 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

17 81. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
18 conduct described herein, have committed an "intentional theft of wages in an amount greater than
19 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
20 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
21 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
22 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
23 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
24 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
25 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
26 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
27 California Penal Code section 496(c).

28 82. Also, pursuant to Code of Civil Procedure Section 1021.5, Plaintiff will seek attorneys'

1 fees and costs from Defendants in an amount subject to proof and approved by the Court.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 **(AGAINST ALL DEFENDANTS)**

5 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
6 fully set forth herein.

7 84. At all relevant times, Defendants had a duty to comply with Labor Code Section 226.

8 85. Labor Code Section 226(a) requires that, semimonthly or at the time of each payment
9 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
10 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
11 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
12 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
13 identification number of the employee, (8) the name and address of the legal entity that is the
14 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
15 at each hourly rate.

16 86. Labor Code Section 226(e)(1) authorizes an employee suffering injury as a result of a
17 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
18 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
19 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
20 an award of costs and attorneys' fees.

21 87. During the relevant time period, Defendants have knowingly and intentionally failed
22 to comply with Labor Code Section 226(a) on wage statements that were provided to Plaintiff and
23 Class Members. The deficiencies include, among other things, Defendants' failure to correctly state
24 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
25 pay period, and the corresponding number of hours worked at each hourly rate.

26 88. As a result of Defendants' violation of California Labor Code Section 226(a), Plaintiff
27 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
28 Plaintiff and Class Members have been injured by Defendants' intentional violation of California

1 Labor Code Section 226(a) because they were denied both their legal right to receive, and their
2 protected interest in receiving, accurate itemized wage statements under California Labor Code
3 Section 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
4 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not
5 have had to engage in these efforts and incur these costs had Defendants provided the accurate wages
6 earned and number of hours worked at each corresponding pay rate. This has also delayed Plaintiff's
7 ability to demand and recover the underpayment of wages from Defendants.

8 89. Defendants' violations of California Labor Code Section 226(a) prevented Plaintiff and
9 Class Members from knowing, understanding and disputing the wages paid to them, and resulted in
10 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
11 failure to comply with California Labor Code Section 226(a), Plaintiff and Class Members have
12 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
13 according to proof at trial.

14 90. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
15 Code Section 226(h), compelling Defendants to comply with California Labor Code Section 226, and
16 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

17 **FIFTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **(AGAINST ALL DEFENDANTS)**

20 91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
21 fully set forth herein.

22 92. At all relevant times, Defendants had a duty to comply with Labor Code Sections 201,
23 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
24 Waiting Time Subclass Members.

25 93. Labor Code Section 201 requires that if an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately.

27 94. Labor Code Section 202 requires that if "an employee not having a written contract for
28 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours

1 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
2 which case the employee is entitled to his or her wages at the time of quitting.

3 95. Labor Code Section 203 provides that if an employer willfully fails to pay, without
4 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
5 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
6 action therefor is commenced, but that the wages shall not continue for more than 30 days per
7 employee.

8 96. During the relevant time period, Defendants willfully failed to pay Waiting Time
9 Subclass Members all their earned wages upon termination including, but not limited to, minimum,
10 regular, and overtime compensation, and/or premium compensation either at the time of discharge or
11 within 72 hours of leaving Defendants' employ.

12 97. As a result of Defendants' failure to timely pay all wages owed to Waiting Time
13 Subclass Members in accordance with Labor Code Sections 201, 202 and 203, Waiting Time Subclass
14 Members are entitled to recover waiting time penalties, prejudgment interest, attorneys' fees, and costs
15 in amounts that will be established at trial.

16 **SIXTH CAUSE OF ACTION**

17 **VIOLATION OF THE UNFAIR COMPETITION LAW**

18 **(AGAINST ALL DEFENDANTS)**

19 98. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
20 fully set forth herein.

21 99. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful
22 and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the
23 public interest within the meaning of Code of Civil Procedure Section 1021.5.

24 100. Defendants' activities, as alleged herein, violate California law and constitute unlawful
25 business acts or practices in violation of California Business and Professions Code Sections 17200, *et*
26 *seq.*

27 101. A violation of Business and Professions Code Sections 17200, *et seq.* may be
28 predicated on the violation of any state or federal law.

1 102. Defendants' policies and practices have violated state law in at least the following
2 respects:

- 3 (a) Failing to pay all minimum, regular, and overtime wages due to Plaintiff and Class
4 Members in violation of Labor Code Sections 204, 206, 510, 1182.12, 1194, 1194.2,
5 1197, and 1198;
- 6 (b) Failing to provide meal periods without paying Plaintiff and Class Members premium
7 wages for every day in which a meal period was not provided in violation of Labor
8 Code Sections 226.7 and 512;
- 9 (c) Failing to authorize or permit rest breaks without paying Plaintiff and Class Members
10 premium wages for every day in which a rest break was not authorized or permitted in
11 violation of Labor Code Section 226.7;
- 12 (d) Failing to provide Plaintiff and Class Members with accurate itemized wage statements
13 in violation of Labor Code Section 226; and
- 14 (e) Failing to timely pay all earned wages to Waiting Time Subclass Members upon
15 separation of employment in violation of Labor Code Sections 201, 202 and 203.

16 103. Defendants intentionally avoided paying Plaintiff and Class Members wages and
17 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
18 undercut their competitors and establish and gain a greater foothold in the marketplace.

19 104. Pursuant to Business and Professions Code Sections 17202, 17203, and 17208, Plaintiff
20 and Class Members are entitled to restitution of the wages unlawfully withheld and retained by
21 Defendants during a period that commences four (4) years and 178 days prior to the filing of this
22 action, and inclusive of any period of time in which the applicable statute of limitations were tolled
23 between April 6, 2020 and October 1, 2020, pursuant to the California Rules of Court, Appendix I,
24 Emergency Rule 9; an award of attorneys' fees pursuant to Code of Civil Procedure Section 1021.5
25 and other applicable laws; and an award of costs.

26 105. Plaintiff and Class Members are entitled to an injunction, restitution, and other
27 equitable relief against such unlawful practices to return all funds over which Plaintiff and Class
28 Members have an ownership interest and to prevent future damage pursuant to Business and

1 Professions Code Sections 17200 *et seq.*

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

4 **(Against All Defendants)**

5 106. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
6 fully set forth herein.

7 107. California Labor Code Section 2699(a) specifically provides for a private right of
8 action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
9 law, any provision of this code that provides for a civil penalty to be assessed and collected by the
10 Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards,
11 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
12 civil action brought by an aggrieved employee on behalf of himself or himself and other current or
13 former employees pursuant to the procedures specified in Section 2699.3.”

14 108. On July 12, 2024, Plaintiff gave written notice of the specified provisions alleged to
15 have been violated by Defendants including the facts and theories to support the alleged violations, as
16 required by Labor Code section 2699.3 and paid the filing fee. This written notice was provided via
17 certified mail to Defendants and to the LWDA by electronically filing the notice via the Department
18 of Industrial Relations’ website. More than 65 days have passed since Plaintiff submitted his PAGA
19 notice to the LWDA without a response from the LWDA. Accordingly, Plaintiff may commence a
20 civil action to recover penalties under Labor Code Section 2699 pursuant to Section 2699.3 for the
21 violations of the Labor Code described in this Complaint. These penalties include, but are not limited
22 to, penalties under California Labor Code §§ 210, 226.3, 558(a), 1197.1, and 2699(f)(2).

23 109. The statute of limitations is tolled while a plaintiff exhausts his or her administrative
24 remedies with the LWDA prior to suit, which is required by Labor Code Section 2699.3(d).

25 110. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor Code
26 Section 1174(d). Pursuant to California Labor Code Section 1174.5, any person, including any entity,
27 employing labor who willfully fails to maintain accurate and complete records required by California
28 Labor Code Section 1174 is subject to a penalty under Section 1174.5. Pursuant to the applicable IWC

1 Order Section 7(A)(3), every employer shall keep time records showing when the employee begins
2 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
3 Additionally, pursuant to the applicable IWC Order Section 7(A)(5), every employer shall keep total
4 hours worked in the payroll period and applicable rates of pay.

5 111. Defendants' conduct violates numerous Labor Code sections, including, but not limited
6 to, the following:

- 7 (a) Violation of Labor Code Sections 201-204, 206, 210, 256, 510, 558, 1194, 1197,
8 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
9 regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
10 employment and upon separation of employment as herein alleged;
- 11 (b) Violation of Labor Code Sections 226.7 and 512 for failure to provide meal periods to
12 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
13 meal periods as herein alleged;
- 14 (c) Violation of Labor Code Section 226.7 for failure to permit rest breaks to Plaintiff and
15 other aggrieved employees and failure to pay premium wages for missed rest periods
16 as herein alleged;
- 17 (d) Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate
18 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
19 and
- 20 (e) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
21 records regarding the employment of Plaintiff and other aggrieved employees as herein
22 alleged.

23 112. Pursuant to Labor Code Section 2699(c)(1), Plaintiff is an "aggrieved employee"
24 because he was employed by the alleged violators and personally suffered each of the alleged
25 violations committed against him, and therefore is properly suited to represent the interests of all other
26 aggrieved employees.

27 113. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
28 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other

aggrieved employees under PAGA.

114. Pursuant to Labor Code Sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

115. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of all others similarly situated and other Class Members, other aggrieved employees, and the State of California, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of Plaintiff Dennis Diaz as the class representative;
3. For appointment of Torus LLP as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, benefits and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code Section 203;
8. For the amounts provided for in Labor Code Section 226.7;
9. For liquidated damages pursuant to Labor Code Section 1194.2;
10. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
11. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code Sections 17200 *et seq.*;
12. For an order requiring Defendants to restore and disgorge all funds to each employee

1 acquired by means of any act or practice declared by this Court to be unlawful, unfair
2 or fraudulent and, therefore, constituting unfair competition under Business and
3 Professions Code Sections 17200, *et seq.*;

4 13. For permanent injunctive relief described in the UCL cause of action;

5 14. For prejudgment interest on all sums recovered pursuant to Labor Code Section 218.6
6 and Civil Code Sections 3287 and 3289, and applicable law;

7 15. For post judgment interest on all amounts awarded to Plaintiff and Class Members as
8 provided by law;

9 16. For recovery of attorneys' fees and costs provided by Labor Code Sections 218.6, 226,
10 1194, and Code of Civil Procedure Section 1021.5;

11 17. For a declaratory judgment that the practices complained of herein are unlawful under
12 California law;

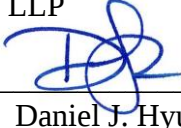
13 18. Such other equitable relief as the Court may deem proper;

14 19. For PAGA penalties; and

15 20. For such other relief as the Court deems just and proper.

16
17 Dated: September 19, 2024

TORUS LLP

18 By: 

Daniel J. Hyun

19 David Alami

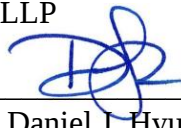
20 Attorneys for Plaintiff DENNIS DIAZ

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

23
24 Dated: September 19, 2024

TORUS LLP

25 By: 

26 Daniel J. Hyun

27 David Alami

28 Attorneys for Plaintiff DENNIS DIAZ