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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

11 AARON PERSONS, individually, and on
12 behalf of other members of the general
13 public similarly situated, and as an
14 aggrieved employee pursuant to the Private
15 Attorneys General Act ("PAGA"),
16 Plaintiff,

17 vs.

18 WHOLESALE EQUIPMENT OF
19 FRESNO, INC., a California corporation;
20 and DOES 1 through 10, inclusive,

21 Defendants.

Case No.: 24CV015385

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11070 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Aaron Persons, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Sacramento, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least two locations within the County of Sacramento, including Defendants' facilities in West Sacramento (3834 Commerce Drive, West Sacramento, California 95691) and Sacramento (536 Display Way, Sacramento, California 95838). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Sacramento County and Plaintiff could bring this action to recover penalties in Sacramento County, venue is proper.

THE PARTIES

4. Plaintiff Aaron Persons is a resident of Fresno, in Fresno County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2018 to March 2024. Plaintiff worked for Defendants as a Service Technician out of their facility in Fresno, California. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, performing maintenance and repairs on industrial equipment such as tractors, scissor lifts, and boom lifts, at Defendants' facilities and customer jobsites.

5. WHOLESALE EQUIPMENT OF FRESNO, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of WHOLESale EQUIPMENT OF
5 FRESNO, INC. at all relevant times.

6 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to WHOLESale
8 EQUIPMENT OF FRESNO, INC. and/or DOES 1 through 10 (collectively, “Defendants” or
9 “WEF”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
10 concert with, each of the other co-Defendants and was acting within the course and scope of
11 such agency, employment, joint venture, or concerted activity with legal authority to act on
12 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
13 the official policy of Defendants.

14 9. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

18 10. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **GENERAL ALLEGATIONS**

22 11. Defendants specialize in the retail, maintenance, and leasing of pre-owned
23 equipment, particularly forklifts, and operate at least five (5) locations throughout Central
24 California. Upon information and belief, Defendants maintain a single, centralized Human
25 Resources (“HR”) department at their company headquarters in Fresno, California, which is
26 responsible for the recruiting and hiring of new employees, and communicating and
27 implementing Defendants’ company-wide policies, including timekeeping policies and meal
28 and rest period policies, to employees throughout California.

1 12. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 13. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their company headquarters in Fresno, California, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations in
11 California, including Plaintiff and class members. Based upon information and belief,
12 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 14. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

18 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
20 and advisors knowledgeable about California labor and wage law, employment and personnel
21 practices, and about the requirements of California law.

22 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
23 members were not paid for all hours worked because all hours worked were not recorded.

24 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive certain wages for
26 overtime compensation and that they were not receiving certain wages for overtime
27 compensation.

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

1 should have known that Plaintiff and class members were entitled to be paid at a regular rate
2 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
3 premiums, that included as eligible income all remuneration required by law, including but not
4 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
5 forms of compensation, but failed to include all forms of remuneration in calculating the
6 regular rate of pay for Plaintiff and class members.

7 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive at least minimum
9 wages for compensation and that they were not receiving at least minimum wages for work
10 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
11 and class members were not paid at least minimum wages for work done off-the-clock.

12 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to meal periods in
14 accordance with the California Labor Code and applicable Industrial Welfare Commission
15 (“IWC”) Wage Order or payment of one (1) additional hour of pay at their regular rates of pay
16 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and
17 that Plaintiff and class members were not provided with all meal periods or payment of one
18 (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
19 uninterrupted, thirty (30) minute meal period.

20 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to rest periods in
22 accordance with the California Labor Code and applicable IWC Wage Order or payment of
23 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
24 permitted to take a compliant rest period and that Plaintiff and class members were not
25 authorized and permitted to take compliant rest periods or provided with payment of one (1)
26 additional hour of pay at their regular rates of pay when they were not authorized and
27 permitted to take a compliant rest period.

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

1 should have known that Plaintiff and class members were entitled to receive complete and
2 accurate wage statements in accordance with California law. In violation of the California
3 Labor Code, Plaintiff and class members were not provided complete and accurate wage
4 statements.

5 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that they had a duty to maintain accurate and complete payroll records in
7 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
8 knowingly, and intentionally failed to do so.

9 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to timely payment of all
11 wages earned upon termination of employment. In violation of the California Labor Code,
12 Plaintiff and class members did not receive payment of all wages due, including, but not
13 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
14 time pay, within permissible time periods.

15 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to timely payment of wages
17 during their employment. In violation of the California Labor Code, Plaintiff and class
18 members did not receive payment of all wages, including, but not limited to, overtime wages,
19 minimum wages, meal and rest period premiums, and/or reporting time pay, within
20 permissible time periods.

21 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive all reporting time
23 pay when Plaintiff and class members were required to report to work but were put to work
24 for less than half of their usual or scheduled shift. In violation of the California Labor Code
25 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time
26 pay.

27 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive full

1 reimbursement for all business-related expenses and costs they incurred during the course and
2 scope of their employment and that they did not receive full reimbursement of applicable
3 business-related expenses and costs incurred.

4 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that Defendants had a duty to provide
6 Plaintiff and class members with written notice of the material terms of their employment with
7 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

8 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to compensate
10 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
11 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
12 falsely represented to Plaintiff and class members that they were properly denied wages, all in
13 order to increase Defendants' profits.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

15 30. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
18 violations of the California Labor Code and applicable IWC Wage Order may, as an
19 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
20 themselves and other current or former employees pursuant to procedures outlined in
21 California Labor Code section 2699.3.

22 31. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
23 "any person who was employed by the alleged violator and personally suffered each of the
24 violations alleged."

25 32. Plaintiff and other current and former employees of Defendants are "aggrieved
26 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
27 current or former employees and each of the alleged violations were committed against them.

28 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved

1 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
2 following requirements have been met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the LWDA and by certified mail to the employer of
5 the specific provisions of the California Labor Code alleged to have
6 been violated, including the facts and theories to support the alleged
7 violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The LWDA shall notify the employer and the aggrieved employee or
12 representative by certified mail that it does not intend to investigate the
13 alleged violation ("LWDA Notice") within sixty (60) calendar days of
14 the postmark date of the aggrieved employee's notice. Upon receipt of
15 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
16 (65) calendar days of the postmark date of the aggrieved employee's
17 notice, the aggrieved employee may commence a civil action pursuant
18 to California Labor Code section 2699 to recover civil penalties.

19 34. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
20 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
21 provision other than those listed in Section 2699.5 after the following requirements have been
22 met:

- 23 (a) The aggrieved employee or representative shall give written notice by
24 online filing with the LWDA and by certified mail to the employer of
25 the specific provisions of the California Labor Code alleged to have
26 been violated (other than those listed in Section 2699.5), including the
27 facts and theories to support the alleged violation.
- 28 (b) An aggrieved employee's notice filed with the LWDA pursuant to

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

35. On August 22, 2024, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-1047058-24. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

36. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

37. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

38. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.”

8 39. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
10 rights by violating various sections of the California Labor Code as set forth above.

11 40. As set forth below, Defendants have violated numerous provisions of both the
12 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
13 Order.

14 41. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
15 2699(a), 2699(k), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the
16 public interest as a private attorney general, seeks assessment and collection of civil penalties
17 and injunctive relief for himself, all other aggrieved employees, and the State of California
18 against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a),
19 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

20 **CLASS ACTION ALLEGATIONS**

21 42. Plaintiff brings this action on his own behalf, as well as on behalf of each and
22 all other persons similarly situated, and thus seeks class certification under California Code of
23 Civil Procedure section 382.

24 43. All claims alleged herein arise under California law for which Plaintiff seeks
25 relief authorized by California law.

26 44. Plaintiff’s proposed class consists of and is defined as follows:

27 All persons who worked for Defendants as non-exempt, hourly
28 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial (“Class”).

1 45. Plaintiff's proposed subclass consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California and who received at least one wage
4 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

5 46. Members of the Class and Subclass are referred to herein as "class members."

6 47. Plaintiff reserves the right to redefine the Class and Subclass and to add
7 additional subclasses as appropriate based on further investigation, discovery, and specific
8 theories of liability.

9 48. There are common questions of law and fact as to class members that
10 predominate over questions affecting only individual members, including, but not limited to:

- 11 (a) Whether Defendants required Plaintiff and class members to work over
12 eight (8) hours per day, over twelve (12) hours per day, or over forty
13 (40) hours per week and failed to pay all legally required overtime
14 compensation to Plaintiff and class members;
- 15 (b) Whether Defendants failed to include all forms of remuneration in the
16 regular rate of pay as required by law for purposes of paying overtime
17 wages and/or meal and rest period premiums to Plaintiff and class
18 members;
- 19 (c) Whether Defendants failed to pay Plaintiff and class members at least
20 minimum wages for all hours worked;
- 21 (d) Whether Defendants failed to provide Plaintiff and class members with
22 meal periods;
- 23 (e) Whether Defendants failed to authorize and permit Plaintiff and class
24 members to take rest periods;
- 25 (f) Whether Defendants provided Plaintiff and class members with
26 complete and accurate wage statements as required by California Labor
27 Code section 226(a);
- 28 (g) Whether Defendants maintained accurate payroll records as required by

California Labor Code section 1174(d);

- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members during their employment;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11070(5);
- (k) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (l) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

49. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

51. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

52. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

53. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

54. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

55. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 56. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
8 class members were not paid overtime premiums for all of the hours they worked in excess of
9 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
10 hours in a week, because all hours worked were not recorded.

11 57. First, upon information and belief, during the relevant period, Defendants had a
12 company-wide policy and/or practice of improperly rounding employee clock-in and clock-out
13 times in their timekeeping system to the tenth (0.10) of an hour. Defendants' rounding policy
14 resulted in the failure to compensate Plaintiff and class members fully for all hours worked,
15 causing Plaintiff and class members to not be paid overtime wages for all of the overtime
16 hours they actually worked. Upon information and belief, Defendants' rounding policy was,
17 and continues to be, unfair and has, over time, resulted in the underpayment of wages to
18 Plaintiff and class members. To the extent Defendants' rounding policy took away time
19 worked that was eligible for overtime, Plaintiff and class members were denied overtime pay
20 for all hours worked.

21 58. Second, during the relevant time period, Defendants had, and continue to have,
22 a company-wide policy and/or practice of discouraging and impeding Plaintiff and class
23 members from recording hours worked that were outside of their scheduled shifts in order to
24 limit the amount of overtime employees could accrue. This policy of limiting overtime led
25 Plaintiff and class members to work off-the-clock outside of their scheduled shift times. For
26 example, at least once per month, Defendant's management required Plaintiff to assist
27 customers with loading heavy equipment and parts, such as machines and tires, onto their
28 vehicles, which could take from 5 to 30 minutes, but was not permitted to remain clocked in

1 and record this time spent working after his scheduled shift end-time. Additionally, on
2 information and belief, Defendants' management would alter and/or falsify time records to
3 shave off time Plaintiff and class members spent working in order to limit overtime accrual.

4 59. Third, in conjunction with their policy of limiting overtime accrual, Defendants
5 had, and continue to have, a company-wide policy and/or practice requiring Plaintiff and class
6 members to respond to phone communications from Defendants' management before and after
7 their shifts or on their days off. For example, approximately three (3) times per week,
8 Plaintiff was required to answer work-related phone calls from his managers, while off-the-
9 clock, to discuss part orders and customer repairs. Thus, Defendants failed to track the time
10 Plaintiff and class members spent working outside of their shifts, and Plaintiff and class
11 members received no compensation for this time.

12 60. Fourth, Defendants had, and continue to have, company-wide policies and/or
13 practices of understaffing their facilities while assigning heavy workloads, which included
14 pressure to meet repair service completion targets (*see infra*). Defendants' policies and/or
15 practices resulted in a failure to provide Plaintiff and class members with adequate meal
16 period coverage, and thus, Plaintiff and class members were not always afforded uninterrupted
17 30-minute meal periods during shifts when they were entitled to receive a meal period.
18 Defendants also had a practice of failing to adhere to a schedule for meal periods, which
19 further caused Plaintiff and class members to not be relieved of their duties for compliant
20 meal periods. For example, approximately twice per week, Plaintiff worked through his meal
21 periods to keep up with the demands of work and meet Defendants' target of completing
22 \$20,000 in repair services each month, often eating meals while driving between customer
23 jobsites. As another example, Plaintiff's meal periods would be interrupted by Defendants'
24 management calling him on his personal cellular phone to discuss work-related matters, which
25 could take up to 20 minutes. When working at Defendants' facilities, Defendants'
26 management would require Plaintiff cut his meal periods short to attend to customers or finish
27 repairs. Thus, Plaintiff and class members worked through meal periods and/or had meal
28 periods cut short or interrupted in order to handle their workloads. Defendants did not

1 compensate Plaintiff and class members for the time they spent working off the clock during
2 unpaid meal periods.

3 61. Fifth, because Defendants frowned upon employees accruing meal period
4 penalties, Defendants' management pressured employees to clock out for meal periods, upon
5 threat of discipline, and/or adjusted employee time records to reflect compliant meal periods,
6 even when they had not received compliant meal periods. For example, Plaintiff would clock
7 out at his scheduled meal period time of 11:00 a.m. but would work through his unpaid meal
8 period, out of fear of being disciplined by Defendants. Thus, Defendants did not record all
9 hours worked during meal periods, and Plaintiff and class members performed work during
10 meal periods for which they were not paid.

11 62. Defendants knew or should have known that as a result of these company-wide
12 practices and/or policies, Plaintiff and class members were performing their assigned duties
13 off-the-clock before and after their shifts and during meal periods, and were suffered or
14 permitted to perform work for which they were not paid. Because Plaintiff and class members
15 worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of
16 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
17 members were not paid overtime wages for all of the overtime hours they actually worked.

18 63. Moreover, Defendants did not pay Plaintiff and class members the correct
19 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
20 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
21 and/or other forms of remuneration. However, in violation of the California Labor Code,
22 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
23 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
24 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
25 class members worked overtime and received these other forms of pay, Defendants failed to
26 pay all overtime wages by paying a lower overtime rate than required.

27 64. For example, Defendants paid Plaintiff and class members incentive pay and/or
28 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage

1 statements as “BONUS.” During pay periods that Plaintiff and class members were paid
2 overtime wages, Defendants did not incorporate the incentive pay and/or nondiscretionary
3 bonuses into Plaintiff’s and class members’ regular rate of pay and, as a result, paid them at
4 incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
5 Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular
6 rate of pay. Defendants’ failure to properly calculate the overtime rates of pay based on all
7 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class
8 members on a company-wide basis.

9 65. Defendants’ failure to pay Plaintiff and class members the balance of overtime
10 compensation as required by California law, violates the provisions of California Labor Code
11 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
12 members are entitled to recover from Defendants their unpaid overtime compensation, as well
13 as interest, costs, and attorneys’ fees.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 16 **Minimum Wages** 17 **(Against all Defendants)**

18 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
21 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
22 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
23 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the
24 time during which an employee is subject to the control of an employer, and includes all the
25 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
26 Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

27 68. As set forth above, upon information and belief, Defendants had a company-
28 wide policy and/or practice of rounding Plaintiff’s and class members’ hourly clock-in and

1 clock-out times in their timekeeping system to the tenth (.10) of an hour, resulting in the
2 failure to compensate them for all hours worked. Additionally, as also set forth above, as a
3 result of Defendants' policy of limiting the amount of overtime employees could accrue,
4 Defendants required Plaintiff and class members to perform work off-the-clock outside of
5 their scheduled shift times, such as assisting customers and responding to phone
6 communications from Defendants' management, but they were not permitted to remain
7 clocked in and/or record this time spent working outside of scheduled shifts. As also stated,
8 on information and belief, due to Defendants' practices of management altering and/or
9 falsifying time records, Plaintiff and class members were prevented from recording the entire
10 time worked outside of their scheduled shifts, and thus were not paid for this time.

11 69. Moreover, as also stated, due to Defendants' policies and/or practices of
12 understaffing their facilities while assigning heavy workloads, including pressure to meet
13 repair service completion targets, and failing to adhere to a schedule for meal periods, Plaintiff
14 and class members were impeded from taking all uninterrupted meal periods to which they
15 were entitled and were required to work off-the-clock during meal periods, have their meal
16 periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
17 periods. Moreover, as also stated, in order to prevent employees from accruing meal period
18 penalties, Defendants' management pressured employees to clock out for meal periods, upon
19 threat of discipline, and/or adjusted employee time records to reflect compliant meal periods,
20 even when meal periods were missed, short, and/or interrupted. Thus, Defendants
21 systematically failed to pay Plaintiff and class members for actual hours worked during unpaid
22 meal periods because these hours were not always correctly recorded.

23 70. Defendants did not pay minimum wages for all hours worked by Plaintiff and
24 class members. To the extent that these off-the-clock hours did not qualify for overtime
25 premium payment, Defendants did not pay at least minimum wages for those hours worked
26 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198.

28 71. Defendants' failure to pay Plaintiff and class members minimum wages violates

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period Violations (Against all Defendants)

72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

73. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

74. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

75. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. As stated, Defendants had, and continue to have, company-wide policies and/or

1 practices of understaffing while assigning heavy workloads, including pressure to meet repair
2 service completion targets, which has resulted in a lack of meal period coverage and prevented
3 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
4 were entitled. Further, as stated, Defendants had a company-wide practice and/or policy of
5 failing to adhere to a schedule for meal periods, which further caused Plaintiff and class
6 members to not be relieved of their duties for compliant meal periods.

7 77. As a result, Plaintiff and class members had to work through all or part of their
8 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
9 before taking meal periods. For example, as stated, approximately twice per week, Plaintiff
10 worked through his meal periods to keep up with the demands of work and meet Defendants'
11 repair service completion targets, often eating meals while driving between customer jobsites.
12 As another example, as stated, Plaintiff's meal periods would be interrupted by Defendants'
13 management calling him to discuss work-related matters, which could take up to 20 minutes.
14 As also stated, when working at Defendants' facilities, Defendants' management required
15 Plaintiff to cut his meal periods short to attend to customers or finish repairing forklifts.
16 Additionally, approximately two (2) times per week, Plaintiff took his meal periods late, after
17 the fifth hour of work, due to the lack of coverage.

18 78. Also, as stated, because Defendants frowned upon employees accruing meal
19 period penalties, Defendants' management pressured employees to clock out for meal periods,
20 upon threat of discipline, and/or adjusted employee time records to reflect compliant meal
21 periods, regardless of whether they had received a compliant meal period or not, in order to
22 strictly limit the meal penalties that would need to be paid by Defendants.

23 79. Additionally, Plaintiff and class members worked shifts in excess of ten (10)
24 hours without receiving an uninterrupted second 30-minute meal period. For example, during
25 his employment, Plaintiff sometimes worked shifts in excess of ten (10) or more hours per
26 day, but was not provided a second 30-minute meal period. Plaintiff and class members did
27 not sign valid meal period waivers on days that they were entitled to meal periods and were
28 not relieved of all duties.

1 80. At all times herein mentioned, Defendants knew or should have known that, as
2 a result of these policies, Plaintiff and class members were prevented from being relieved of
3 all duties and required to perform some of their assigned duties during meal periods.
4 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
5 members meal period premiums when meal periods were missed, shortened, interrupted,
6 and/or late. Further, to the extent that Defendants' rounding policy reported that Plaintiff and
7 class members were provided with timely, full 30-minute meal periods when, in fact, the meal
8 periods were taken after the fifth hour of work or were less than 30 minutes, Plaintiff and class
9 members did not receive meal period penalties for these improperly rounded meal periods.

10 81. Moreover, Defendants engaged in a company-wide practice and/or policy of
11 not paying meal period premiums owed when compliant meal periods are not provided.
12 Because of this practice and/or policy, Plaintiff and class members have not received premium
13 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
14 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal
15 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
16 premiums because Defendants systematically failed to include all forms of compensation,
17 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
18 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
19 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
20 and failed to pay the full meal period premiums due.

21 82. Defendants' conduct violates the applicable IWC Wage Order, and California
22 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
23 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
24 rate of compensation for each work day that the meal period was not provided.

25 **FOURTH CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 27 **(Against all Defendants)**

28 83. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 84. At all relevant times herein set forth, the applicable IWC Wage Order and
3 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
4 members' employment by Defendants.

5 85. At all relevant times, the applicable IWC Wage Order provides that "[e]very
6 employer shall authorize and permit all employees to take rest periods, which insofar as
7 practicable shall be in the middle of each work period" and that the "rest period time shall be
8 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
9 hours or major fraction thereof" unless the total daily work time is less than three and one-half
10 (3 ½) hours.

11 86. At all relevant times, California Labor Code section 226.7 provides that no
12 employer shall require an employee to work during any rest period mandated by an applicable
13 order of the California IWC. To comply with its obligation to authorize and permit rest
14 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
15 employer must "relinquish any control over how employees spend their break time, and
16 relieve their employees of all duties—including the obligation that an employee remain on
17 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
18 *Inc.*, 2 Cal. 5th 257, 273 (2016).

19 87. Pursuant to the applicable IWC Wage Order and California Labor Code section
20 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
21 additional hour of pay at their regular rates of pay for each work day that a required rest
22 period was not authorized and permitted.

23 88. During the relevant time period, Defendants regularly failed to authorize and
24 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
25 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
26 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and
27 class members from being relieved of all duty to take rest periods. Additionally, Defendants
28 failed to adhere to a schedule for rest periods, which, coupled with Defendants' failure to

1 provide adequate rest period coverage, further led to Plaintiff and class members not being
2 authorized and permitted to take rest periods.

3 89. Furthermore, upon information and belief, during the relevant time period,
4 Defendants maintained and implemented a company-wide on-premises rest period policy,
5 which effectively required that Plaintiff and class members remain on the work premises
6 during their rest periods. Because Plaintiff and class members were restricted from leaving
7 the premises during rest periods, they were denied the ability to use their rest periods freely
8 for their own purposes, such as running personal errands. Thus, Defendants effectively
9 maintained control over Plaintiff and class members during rest periods.

10 90. As a result of Defendants' practices and policies, Plaintiff and class members
11 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
12 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff
13 missed some of his rest periods due to the lack of coverage and Defendants' failure to adhere
14 to a schedule for rest periods. When Plaintiff was able to take rest periods, they were often
15 interrupted or cut short because Defendants' managers required him to assist customers with
16 loading equipment onto their vehicles or to complete repairs.

17 91. Defendants have also engaged in a company-wide practice and/or policy of not
18 paying rest period premiums owed when compliant rest periods are not authorized and
19 permitted. Because of this practice and/or policy, Plaintiff and class members have not
20 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
21 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
22 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
23 premium wages because Defendants failed to include all forms of compensation, such as
24 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular
25 rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed
26 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
27 the applicable IWC Wage Order.

28 92. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
2 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
3 compensation for each work day that a compliant rest period was not authorized and
4 permitted.

5 **FIFTH CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
7 **Statements and Failure to Maintain Accurate Payroll Records**
8 **(Against all Defendants)**

9 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 94. At all relevant times herein set forth, California Labor Code section 226(a)
12 provides that every employer shall furnish each of his or her employees an accurate and
13 complete itemized wage statement in writing, including, but not limited to, the name and
14 address of the legal entity that is the employer, the inclusive dates of the pay period, total
15 hours worked, and all applicable rates of pay.

16 95. At all relevant times, Defendants have knowingly and intentionally provided
17 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
18 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
19 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name
20 and address of the legal entity that is the employer; and all applicable hourly rates in effect
21 during the pay period, including rates of pay for overtime wages and/or meal and rest period
22 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
23 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

24 96. Because Defendants did not record the time Plaintiff and Subclass members
25 spent working off the clock, improperly rounded Plaintiff's and Subclass members' total hours
26 worked, and deducted time from their records for meal periods that were interrupted and/or
27 missed (and therefore time for which they should have been paid), Defendants did not list the
28 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in

1 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
2 accurately list the total number of hours worked by Plaintiff and Subclass members, in
3 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
4 during the pay period and the corresponding accurate number of hours worked at each hourly
5 rate, in violation of section 226(a)(9).

6 97. Moreover, because Defendants did not calculate Plaintiff's and Subclass
7 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
8 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
9 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
10 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
11 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
12 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

13 98. In addition, and separate from these violations, Defendants issued uniform
14 wage statements to Plaintiff and Subclass members that fail to list the correct name and
15 address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8).
16 The purpose of section 226(a)(8) is to provide California employees with transparency as to
17 the true identity of their employer, to allow the employee to contact their employer during
18 employment or in the future for various reasons, including filing an administrative claim,
19 judicial claim, or other action to seek relief against their employer, obtain unemployment
20 benefits, etc. This includes providing employees with a physical address of the employer and
21 not a Post Office Box. Plaintiff's and Subclass members' wage statements incorrectly list the
22 employer's address as "P.O. BOX 2637 Fresno, CA 93745" but, according to the California
23 Secretary of State's website, the correct address is "3183 S GOLDENSTATE BLVD.
24 FRESNO, CA 93725." Further, during the relevant time period, Defendants systematically,
25 and on a company-wide basis, issued wage statements to Plaintiff and Subclass members that
26 incorrectly list the employer as "Wholesale Equipment", but according to the California
27 Secretary of State's website, the correct name of the employing entity is "WHOLESALE
28 EQUIPMENT OF FRESNO, INC."

1 99. The wage statement deficiencies also include, among other things, failing to list
2 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
3 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
4 for which employees were paid; failing to list the name of the employee and only the last four
5 digits of his or her social security number or an employee identification number other than a
6 social security number; and/or failing to state all hours worked as a result of not recording or
7 stating hours worked off-the-clock.

8 100. California Labor Code section 1174(d) provides that “[e]very person employing
9 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or
14 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
16 members showing the daily hours they worked and the wages paid thereto as a result of failing
17 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
18 Subclass members’ total hours worked.

19 101. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the relevant time
26 period, Defendants engaged in company-wide practices and/or policies of failing to record
27 actual hours worked (including falsifying time records by recording that compliant meal
28 periods were taken regardless of if or when meal periods were actually taken), and thereby

1 failed to keep accurate records of work period and meal period start and end times for Plaintiff
2 and Subclass members, in violation of section 1198. Also, in light of Defendants' failure to
3 provide Plaintiff and Subclass members with second 30-minute meal periods to which they
4 were entitled, Defendants kept no records of meal start and end times for second meal periods.

5 102. Plaintiff and Subclass members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
8 employee.

9 **SIXTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 11 **Termination** 12 **(Against all Defendants)**

13 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 104. This cause of action is dependent upon, and wholly derivative of, the overtime
16 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
17 not timely paid to Plaintiff and those class members no longer employed by Defendants upon
18 their termination.

19 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
20 that if an employer discharges an employee, the wages earned and unpaid at the time of
21 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
22 her employment, his or her wages shall become due and payable not later than seventy-two
23 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
24 his or her intention to quit, in which case the employee is entitled to his or her wages at the
25 time of quitting.

26 106. Defendants willfully failed to pay Plaintiff and class members who are no
27 longer employed by Defendants the earned and unpaid wages set forth above, including but
28 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or

1 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
2 leaving Defendants' employ.

3 107. Defendants' failure to pay Plaintiff and class members who are no longer
4 employed by Defendants their wages earned and unpaid at the time of discharge, or within
5 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
6 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
7 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
8 thirty (30) day maximum pursuant to California Labor Code section 203.

9 SEVENTH CAUSE OF ACTION

10 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 11 **Employment** 12 **(Against all Defendants)**

13 108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 109. This cause of action is dependent upon, and wholly derivative of, the overtime
16 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
17 not timely paid to Plaintiff and class members during their employment.

18 110. At all times relevant herein set forth, Labor Code section 204 provides that all
19 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
20 days, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
22 the month during which the labor was performed.

23 111. At all times relevant herein, Labor Code section 204 provides that all wages
24 earned by any person in any employment between the sixteenth (16th) and the last day,
25 inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
27 month.

28 112. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned for labor in excess of the normal work period shall be paid no later than the payday for
2 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
3 204 provides that the requirements of this section are deemed satisfied by the payment of
4 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
5 seven (7) calendar days following the close of the payroll period.

6 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and
7 class members all wages due including, but not limited to, overtime wages, minimum wages,
8 meal and rest period premiums, and/or reporting time pay, within the time periods specified
9 by California Labor Code section 204.

10 114. Defendants' failure to pay Plaintiff and class members all wages due violates
11 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
12 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

13 **EIGHTH CAUSE OF ACTION**

14 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 15 **11070 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 16 **(Against all Defendants)**

17 115. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 116. California Labor Code section 1198 dictates that no employer may employ an
20 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
21 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
22 fixed by the commission shall be the . . . standard conditions of labor for employees. The
23 employment of any employee . . . under conditions of labor prohibited by the order is
24 unlawful.”

25 117. The applicable IWC Wage Order, California Code of Regulations, Title 8,
26 section 11070(5)(A), provides that “[e]ach workday an employee is required to report to the
27 work site and does report, but is not put to work or is furnished less than half of his/her usual
28 or scheduled day's work, the employer shall be pay him/her for half the usual or scheduled

1 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
2 employee's regular rate of pay, which shall not be less than the minimum wage." The
3 "primary purpose of the reporting time regulation" is "to guarantee at least partial
4 compensation for employees who report to work expecting to work a specified number of
5 hours, and who are deprived of that amount because of inadequate scheduling or lack of
6 proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

7 118. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
9 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
10 work for their usual or scheduled shift but were put to work for less than half of their usual or
11 scheduled day's work.

12 119. Defendants had a company-wide practice of sending Plaintiff and class
13 members home early from their shifts, including before they had worked at least half of their
14 usual or scheduled shift, but would not pay Plaintiff and class members for half of their usual
15 or scheduled shift. For example, when scheduled to work a shift of at eight (8) hours,
16 Defendants' managers sent Plaintiff home one (1) hour after the start of his shift. Although
17 Plaintiff and class members reported to work based on the schedule that was provided to them,
18 Defendants would send them home before they worked at least half of their usual or scheduled
19 shifts. When this occurred, Defendants did not pay Plaintiff and class members for at least
20 half of their scheduled day's work or the minimum reporting time pay.

21 120. Accordingly, Plaintiff and class members were not properly compensated with
22 reporting time pay in violation of California Labor Code section 1198 and California Code of
23 Regulations, Title 8, section 11070(5)(A). Plaintiff and class members are therefore entitled
24 to recover from Defendants unpaid wages and interest.

25 **NINTH CAUSE OF ACTION**

26 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

27 **(Against all Defendants)**

28 121. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 122. At all times herein set forth, California Labor Code section 2802 provides that
3 an employer must reimburse employees for all necessary expenditures and losses incurred by
4 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
5 to prevent employers from passing off their cost of doing business and operating expenses on
6 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
7 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
8 tools or equipment are required by the employer or are necessary to the performance of a job,
9 such tools and equipment shall be provided and maintained by the employer, except that an
10 employee whose wages are at least two (2) times the minimum wage provided herein may be
11 required to provide and maintain hand tools and equipment customarily required by the trade
12 or craft."

13 123. During the relevant time period, Defendants, on a company-wide basis,
14 required Plaintiff and class members to use their personal mobile devices, including, but not
15 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
16 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
17 For example, Plaintiff was required to use his personal cellular phone to communicate with his
18 managers to discuss work-related matters, such as materials, equipment, and repair issues.
19 Although Defendants required Plaintiff and class members to use their personal mobile
20 devices and/or mobile data to carry out their work-related duties, Defendants failed to
21 reimburse them for their costs incurred.

22 124. Additionally, Defendants required Plaintiff and class members to purchase
23 supplies and/or equipment necessary for the performance of their duties, but failed to
24 reimburse them for their out-of-pocket costs. For example, Plaintiff spent approximately
25 \$5.00 every couple of weeks on fuel for the company's gas-powered air compressor he used to
26 complete customer repairs and other tasks. Although Defendants required Plaintiff and class
27 members to purchase supplies and/or equipment to carry out their work-related
28 responsibilities, Defendants did not reimburse them for these expenses.

125. Defendants could have provided Plaintiff and class members with the actual equipment for use on the job, such as company mobile devices and supplies and/or equipment, or Defendants could have reimbursed employees for the cost of their mobile device usage and supply and/or equipment expenses, such as fuel for company tools. Instead, Defendants passed these operating costs onto Plaintiff and class members.

126. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

127. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

128. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

129. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, 2802, and 2810.5.

130. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

- 1 Wage Order for Defendants' failure to compensate Plaintiff and other
2 aggrieved employees with all required overtime pay, as alleged herein;
- 3 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to include all forms
5 of remuneration in the regular rate of pay as required by law for
6 purposes of paying overtime wages and/or meal and rest period
7 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 8 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
9 1198, and the applicable IWC Wage Order for Defendants' failure to
10 compensate Plaintiff and other aggrieved employees with at least
11 minimum wages for all hours worked, as alleged herein;
- 12 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
14 and other aggrieved employees with meal periods, as alleged herein;
- 15 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to authorize and
17 permit Plaintiff and other aggrieved employees to take rest periods, as
18 alleged herein;
- 19 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
20 IWC Wage Order for failure to provide accurate and complete wage
21 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 22 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
23 IWC Wage Order for failure to maintain payroll records, as alleged
24 herein;
- 25 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
26 earned wages upon termination, as alleged herein;
- 27 (i) Violation of Labor Code section 204 for failure to pay all earned wages
28 during employment, as alleged herein;

- 1 (j) Failing to pay reporting time pay in violation of California Labor Code
2 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 3 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
4 and other aggrieved employees for all business expenses necessarily
5 incurred, as alleged herein; and
- 6 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
7 provide written notice of information material to Plaintiff's and other
8 aggrieved employees' employment with Defendants, as set forth below.

9 131. At all relevant times herein, California's Wage Theft Prevention Act was
10 enacted to ensure that employers provide employees with basic information material to their
11 employment relationship at the time of hiring, and to ensure that employees are given written
12 and timely notice of any changes to basic information material to their employment. Codified
13 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
14 time of hiring, an employer must provide written notice to employees containing basic and
15 material payroll information, including, among other things, the rate(s) of pay and basis
16 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
17 including any rates for overtime, the regular payday designated by the employer, and any
18 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
19 Code § 2810.5(a)(1)(A)-(C).

20 132. At all relevant times, on information and belief, Defendants failed, on a
21 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
22 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
23 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
24 basic information regarding their employment with Defendants is in violation of Labor Code
25 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

27 //

28 //

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 133. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 134. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 135. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 136. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 137. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to include all forms of remuneration in the regular rate of pay as
26 required by law for purposes of paying overtime wages and/or meal and
27 rest period premiums to Plaintiff and class members, in violation of
28 California Labor Code sections 226.7, 510, and 1198, and the applicable

IWC Wage Order, as alleged herein;

- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (h) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein;
- (i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and
- (j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

138. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written

1 and timely notice of any changes to basic information material to their employment. Codified
2 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
3 time of hiring, an employer must provide written notice to employees containing basic and
4 material payroll information, including, among other things, the rate(s) of pay and basis
5 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
6 including any rates for overtime, the regular payday designated by the employer, and any
7 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
8 Code § 2810.5(a)(1)(A)-(C).

9 139. At all relevant times, on information and belief, Defendants failed, on a
10 company-wide basis, to provide written notice to Plaintiff and class members that lists the
11 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
12 to provide Plaintiff and class members with written notice of basic information regarding their
13 employment with Defendants is in violation of California Labor Code section 2810.5.

14 140. As a result of the violations of California law herein described, Defendants
15 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
16 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
17 herein.

18 141. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
19 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
20 Defendants during a period that commences four years prior to the filing of the initial
21 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
22 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
23 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

24 **TWELFTH CAUSE OF ACTION**

25 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

26 **Unfair Business Practices**

27 **(Against all Defendants)**

28 142. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 143. Defendants are “persons” as defined by California Business & Professions
3 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
4 and/or associations.

5 144. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
6 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
7 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
8 seeks to enforce important rights affecting the public interest within the meaning of Code of
9 Civil Procedure section 1021.5.

10 145. Defendants’ activities, namely Defendants’ company-wide practice and/or
11 policy of not paying Plaintiff and class members all meal and rest period premiums due to
12 them under Labor Code section 226.7, deprived Plaintiff and class members of the
13 compensation guarantee and enhanced enforcement implemented by section 226.7. The
14 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
15 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
16 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
17 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
18 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
19 unfair business practice in violation of California Business & Professions Code sections
20 17200, *et seq.* (*Id.*)

21 146. A violation of California Business & Professions Code sections 17200, *et seq.*
22 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
23 and practices have violated the spirit of California’s meal and rest period laws and constitute
24 acts against the public policy behind these laws.

25 147. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
26 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
27 benefits implemented by section 226.7 withheld and retained by Defendants during a period
28 that commences four years prior to the filing of the initial complaint; a permanent injunction

1 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
2 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
3 Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **REQUEST FOR JURY TRIAL**

5 Plaintiff requests a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
8 against Defendants, jointly and severally, as follows:

9 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
10 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
11 reserves the right to amend his prayer for relief to seek a different amount.

12 **Class Certification**

13 2. That this case be certified as a class action;

14 3. That Plaintiff be appointed as the representative of the Class and Subclass;

15 4. That counsel for Plaintiff be appointed as class counsel.

16 **As to the First Cause of Action**

17 5. That the Court declare, adjudge, and decree that Defendants violated California
18 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
19 pay all overtime wages due to Plaintiff and class members;

20 6. For general unpaid wages at overtime wage rates and such general and special
21 damages as may be appropriate;

22 7. For pre-judgment interest on any unpaid overtime compensation commencing
23 from the date such amounts were due, or as otherwise provided by law;

24 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
25 California Labor Code section 1194(a); and

26 9. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

1 35. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Sixth Cause of Action**

4 36. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
6 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
7 the employment of Plaintiff and other terminated class members;

8 37. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 38. For waiting time penalties according to proof pursuant to California Labor
11 Code section 203 for all employees who have left Defendants' employ;

12 39. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due, or as otherwise provided by law;

14 40. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 41. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Seventh Cause of Action**

19 42. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
21 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
22 during their employment;

23 43. For all actual, consequential and incidental losses and damages, according to
24 proof;

25 44. For statutory penalties according to proof pursuant to California Labor Code
26 section 210;

27 45. For pre-judgment interest on any unpaid wages from the date such amounts
28 were due, or as otherwise provided by law;

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 47. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Eighth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A) by
8 failing to provide Plaintiff and class members with reporting time pay;

9 49. For all actual, consequential and incidental losses and damages, according to
10 proof;

11 50. For pre-judgment interest on any unpaid wages from the date such amounts
12 were due, or as otherwise provided by law; and

13 51. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Ninth Cause of Action**

16 52. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
18 related expenses and costs incurred by Plaintiff and class members;

19 53. For unpaid business-related expenses and such general and special damages as
20 may be appropriate;

21 54. For pre-judgment interest on any unpaid business-related expenses from the
22 date such amounts were due, or as otherwise provided by law;

23 55. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 56. For attorneys' fees and costs pursuant to California Labor Code section
26 2802(c), or as otherwise provided by law; and

27 57. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); failing to pay Plaintiff and class members reporting time pay, 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

59. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

60. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

61. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

62. For pre-judgment and post-judgment interest as provided by law; and

63. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Eleventh Cause of Action

64. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to pay Plaintiff and class members reporting time pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

65. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

66. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

68. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

69. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes

1 an unfair business practice in violation of California Business and Professions Code sections
2 17200, *et seq.*;

3 70. For restitution of the statutory benefits under section 226.7 unfairly withheld
4 from Plaintiff and class members and prejudgment interest from the day such amounts were
5 due and payable;

6 71. For the appointment of a receiver to receive, manage, and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections
9 17200, *et seq.*;

10 72. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5;

12 73. For pre-judgment and post-judgment interest as provided by law; and

13 74. For such other and further relief as the Court may deem equitable and
14 appropriate.
15

16 Dated: November 21, 2024

Respectfully submitted,

Capstone Law APC

17
18
19 By:



Roxanna Tabatabaeepour

Ryan Tish

Alexander Wallin

Attorneys for Plaintiff Aaron Persons
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EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

August 22, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Aaron Persons v. Wholesale Equipment of Fresno, Inc.*

Dear PAGA Administrator:

This office represents Aaron Persons in connection with his claims under the California Labor Code. Mr. Persons was an employee of WHOLESale EQUIPMENT OF FRESNO, INC. ("WEF").

The employer may be contacted directly at the addresses below:

WHOLESale EQUIPMENT OF FRESNO, INC.	WHOLESale EQUIPMENT OF FRESNO, INC.
3813 S GOLDENSTATE BLVD.	P.O. BOX 2637
FRESNO, CA 93725	FRESNO, CA 93745

Mr. Persons intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Persons seeks relief on behalf of himself, the State of California, and other persons who are or were employed by WEF in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

WEF employed Mr. Persons as a non-exempt employee from approximately September 2018 to March 2024. Mr. Persons worked for WEF as a Service Technician out of its facility in Fresno, California. During his employment, Mr. Persons typically worked eight (8) hours or more per day and five (5) days per week. By the end of his employment, Mr. Persons was compensated approximately \$32.00 per hour. Mr. Persons's job duties included, without limitation, performing maintenance and repairs on industrial equipment such as tractors, scissor lifts, and boom lifts, at Defendants' facilities and customer jobsites.

WEF has committed each of the following Labor Code violations against Mr. Persons, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

WEF’s Company-Wide and Uniform Payroll and HR Practices

WHOLESALE EQUIPMENT OF FRESNO, INC. is a California corporation. WEF specializes in the retail, maintenance, and leasing of pre-owned equipment, particularly forklifts, and operate at least five (5) locations throughout Central California. Upon information and belief, WEF maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fresno, California, for all non-exempt, hourly paid employees working for WEF in California, including Mr. Persons and other aggrieved employees. At all relevant times, WEF issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Persons and other aggrieved employees, regardless of their location or position.

Upon information and belief, WEF maintains a centralized Payroll department at its corporate headquarters in Fresno, California, which processes payroll for all non-exempt, hourly paid employees working for WEF in California, including Mr. Persons and other aggrieved employees. Further, WEF issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Persons and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, WEF utilized the same methods and formulas when calculating wages due to Mr. Persons and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

WEF willfully failed to pay all overtime wages owed to Mr. Persons and other aggrieved employees. During the relevant time period, Mr. Persons and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Mr. Persons’s experience and counsel’s review of those records currently available relating to Mr. Persons’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Persons reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, on information and belief, WEF had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.10) of an hour. WEF's rounding policy resulted in the failure to compensate Mr. Persons and other aggrieved employees fully for all hours worked, causing Mr. Persons and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. WEF's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Persons and other aggrieved employees. To the extent WEF's rounding policy has taken away time worked that was eligible for overtime, Mr. Persons and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, WEF had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Persons and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Mr. Persons and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, at least once per month, WEF's management required Mr. Persons to assist customers with loading heavy equipment and parts, such as machines and tires, onto their vehicles, which could take from 5 to 30 minutes, but was not permitted to remain clocked in and record this time spent working after his scheduled shift end-time. Additionally, on information and belief, WEF's management would alter and/or falsify time records to shave off time Mr. Persons and other aggrieved employees spent working in order to limit overtime accrual.

Third, in conjunction with its policy of limiting overtime accrual, WEF had, and continues to have, a company-wide policy and/or practice requiring Mr. Persons and other aggrieved employees to respond to phone communications from WEF's management before and after their shifts or on their days off. For example, approximately three (3) times per week, Mr. Persons was required to answer work-related phone calls from his managers, while off-the-clock, to discuss part orders and customer repairs. Thus, WEF failed to track the time Mr. Persons and other aggrieved employees spent working outside of their shifts, and Mr. Persons and other aggrieved employees received no compensation for this time.

Fourth, WEF had, and continues to have, company-wide policies and/or practices of understaffing its facilities while assigning heavy workloads, which included pressure to meet repair service completion targets (*see infra*). WEF's policies and/or practices resulted in a failure to provide Mr. Persons and other aggrieved employees with adequate meal period coverage, and thus, Mr. Persons and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. WEF also had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Persons and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately twice per week, Mr. Persons worked through his meal periods to keep up with the demands of work and meet WEF's target of completing \$20,000 in repair services each month, often eating meals while driving between customer jobsites. As another example, Mr. Person's meal periods would be interrupted by WEF's management calling him on his personal cellular phone to discuss work-related matters, which could take up to 20 minutes. When working at WEF's facilities, WEF's management would require Mr. Persons to cut his meal periods short to attend to customers or finish repairs. Thus, Mr. Persons and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. WEF did not compensate Mr. Persons and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fifth, because WEF frowned upon employees accruing meal period penalties, WEF's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when they had not received compliant meal periods. For example, Mr. Persons would clock out at his scheduled meal period time of 11:00 a.m. but would work through his unpaid meal period, out of fear of being disciplined by WEF. Thus, WEF did not record all hours worked during meal periods, and Mr. Persons and other aggrieved employees performed work during meal periods for which they were not paid.

WEF knew or should have known that as a result of these company-wide practices and/or policies, Mr. Persons and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Persons and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Persons and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, WEF did not pay Mr. Persons and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, WEF paid Mr. Persons and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, WEF failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Persons and other aggrieved employees worked overtime and received these other forms of pay, WEF failed to pay all overtime wages by paying a lower overtime rate than required.

For example, WEF paid Mr. Persons and other aggrieved employees nondiscretionary bonuses, which were listed on Mr. Persons's and other aggrieved employees' wage statements as "BONUS." During pay periods that Mr. Persons and other aggrieved employees were paid overtime wages, WEF did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Persons's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, WEF paid Mr. Persons and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. WEF's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Persons and other aggrieved employees on a company-wide basis.

WEF's failure to pay Mr. Persons and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the

time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as set forth above, WEF had a company-wide policy and/or practice of rounding Mr. Persons’s and other aggrieved employees’ clock-in and clock-out times in its timekeeping system to the nearest quarter (0.10) of an hour, resulting in the failure to compensate Mr. Persons and other aggrieved employees fully for all hours worked. Additionally, as also set forth above, as a result of WEF’s policy of limiting the amount of overtime employees could accrue, WEF required Mr. Persons and other aggrieved employees to perform work off-the-clock outside of their scheduled shift times, such as assisting customers and responding to phone communications from WEF’s management, but they were not permitted to remain clocked in and/or record this time spent working outside of scheduled shifts. As also stated, on information and belief, due to WEF’s practices of management altering and/or falsifying time records, Mr. Persons and other aggrieved employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

Second, as also stated, due to WEF’s policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressure to meet repair service completion targets, and failing to adhere to a schedule for meal periods, Mr. Persons and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, WEF’s management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect complaint meal periods, even when meal periods were missed, short, and/or interrupted. Thus, WEF systematically failed to pay Mr. Persons and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, WEF did not pay minimum wages for all hours worked by Mr. Persons and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, WEF did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, WEF regularly failed to pay at least minimum wages to Mr. Persons and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except

that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, WEF had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressure to meet repair service completion targets, which has resulted in a lack of meal period coverage and prevented Mr. Persons and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, WEF had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Persons and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Persons and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, approximately twice per week, Mr. Persons worked through his meal periods to keep up with the demands of work and meet WEF's repair service completion targets, often eating meals while driving between customer jobsites. As another example, as stated, Mr. Persons's meal periods would be interrupted by WEF's management calling him to discuss work-related matters, which could take up to 20 minutes. As also stated, when working at WEF's facilities, WEF's management required Mr. Persons to cut his meal periods short to attend to customers or finish repairing forklifts. Additionally, approximately two (2) times per week, Mr. Persons took his meal periods late, after the fifth hour of work, due to the lack of coverage

Also, as stated, on information and belief, because WEF frowned upon employees accruing meal period penalties, WEF's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by WEF.

Additionally, Mr. Persons and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Persons sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Persons and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, WEF knew or should have known that as a result of its policies, Mr. Persons and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. WEF further knew or should have known that it did not pay Mr. Persons and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, to the extent that WEF's rounding policy reported that Mr. Persons and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of

work or were less than 30 minutes, Mr. Persons and other aggrieved employees did not receive meal period premiums for these improperly rounded meal periods.

Furthermore, WEF engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Persons and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that WEF did pay Mr. Persons and other aggrieved employees premium pay for missed, late, and interrupted meal periods, WEF did not pay Mr. Persons and other aggrieved employees at the correct rate of pay for premiums because WEF systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WEF failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, WEF regularly failed to authorize and permit Mr. Persons and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, WEF's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Persons and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, WEF failed to adhere to a schedule for rest periods, which, coupled with WEF's failure to provide adequate rest period coverage, further led to Mr. Persons and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, WEF maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Persons and other aggrieved employees remain on the work premises during their rest periods.

Because Mr. Persons and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, WEF effectively maintained control over Mr. Persons and other aggrieved employees during rest periods.

As a result of WEF's practices and policies, Mr. Persons and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Persons missed some of his rest periods due to the lack of coverage and WEF's failure to adhere to a schedule for rest periods. When Mr. Persons was able to take rest periods, they were often interrupted or cut short because WEF's managers required him to assist customers with loading equipment onto their vehicles or to complete repairs.

WEF has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Persons and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that WEF did pay Mr. Persons and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, WEF did not pay Mr. Persons and other aggrieved employees at the correct rate of pay for premiums because WEF failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, WEF failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. WEF has not provided Mr. Persons and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

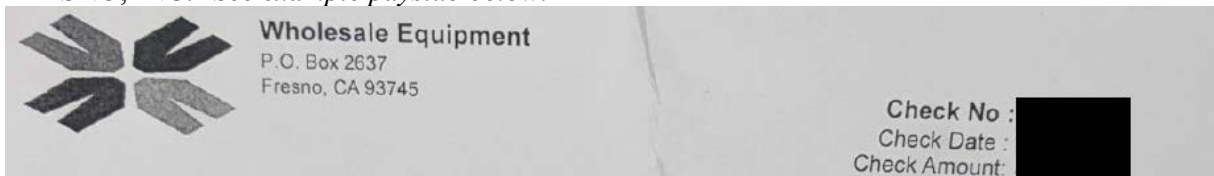
During the relevant time period, WEF has knowingly and intentionally provided Mr. Persons and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, WEF issued uniform wage statements to Mr. Persons and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the

corresponding number of hours worked at each hourly rate. Specifically, WEF violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because WEF did not accurately record the time Mr. Persons and other aggrieved employees spent working off-the-clock, improperly rounded their Mr. Persons's and other aggrieved employees' total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), WEF did not list the correct amount of gross wages and net wages earned by Mr. Persons and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, WEF failed to accurately list the total number of the hours worked by Mr. Persons and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because WEF did not calculate Mr. Persons's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, WEF did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). WEF also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Further, and separate from these violations, WEF issued uniform wage statements to Mr. Persons and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Persons's and other aggrieved employees' wage statements incorrectly list the employer's address as "P. O. BOX 2637 FRESNO, CA 93745" but, according to the California Secretary of State's website, the correct address is "3183 GOLDENSTATE BLVD. FRESNO, CA 93725." Further, during the relevant time period, WEF systematically, and on a company-wide basis, issued wage statements to Mr. Persons and other aggrieved employees that incorrectly list the employer as "Wholesale Equipment", but according to the California Secretary of State's website, the correct name of the employing entity is "WHOLESALE EQUIPMENT OF FRESNO, INC." *See example paystub below.*



The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), WEF willfully failed to maintain accurate payroll records for Mr. Persons and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Persons’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, WEF engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Persons and other aggrieved employees, in violation of section 1198. Furthermore, in light of WEF’s failure to provide Mr. Persons and other aggrieved employees with second 30-minute meal periods to which they were entitled, WEF kept no records of meal start and end times for second meal periods.

Because WEF failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Persons and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Persons and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, WEF failed to pay Mr. Persons and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

WEF willfully failed to pay Mr. Persons and other aggrieved employees who are no longer employed by WEF the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving WEF's employ.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 203, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, WEF violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because WEF failed to pay Mr. Persons and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, WEF had a company-wide practice of sending Mr. Persons and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Persons and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work a shift of eight (8) hours, WEF's managers sent Mr. Persons home one (1) hour after the start of his shift. Although Mr. Persons and other aggrieved employees would report to work based on the schedule that was provided to them, WEF would send them home before they had worked at least half of their scheduled shifts. When this occurred, WEF did not pay Mr. Persons and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay without giving them reporting time pay.

Accordingly, Mr. Persons and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, WEF, on a company-wide basis, required that Mr. Persons and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses and/or mobile data expenses. For example, Mr. Persons used his personal cellular phone to communicate with his managers to discuss work-related matters, such as materials, equipment, and repair issues. Although WEF required Mr. Persons and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities WEF failed to reimburse them for their costs incurred.

Second, WEF required Mr. Persons and other aggrieved employees to purchase supplies and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Persons approximately \$5.00 every couple of weeks on fuel for the company's gas-powered air compressor he used to complete customer repairs and other tasks. Although WEF required Mr. Persons and other aggrieved employees to purchase supplies and/or

equipment to carry out their work-related responsibilities, WEF did not reimburse them for these expenses.

WEF could have provided Mr. Persons and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies and/or equipment, or WEF could have reimbursed employees for the cost of their mobile device usage and supply and/or equipment expenses, such as fuel for company tools. Instead, WEF passed these operating costs off onto Mr. Persons and other aggrieved employees.

Thus, WEF had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and on their operating costs to Mr. Persons and other aggrieved employees in violation of California Labor Code section 2802. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

WEF failed to provide Mr. Persons and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). WEF's failure to provide Mr. Persons and other aggrieved employees with written notice of basic information regarding their employment with WEF is in violation of Labor Code section 2810.5.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring WEF into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” WEF, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Persons’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Persons seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Persons, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against WEF for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Persons seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: WHOLESALE EQUIPMENT OF FRESNO, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 2402

WHOLESALE EQUIPMENT
FRESNO, INC.
3813 S GOLDENSTATE BLVD.
FRESNO, CA 93725

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

WHOLESALE EQUIPMENT
FRESNO, INC.
3813 S GOLDENSTATE BLVD.
FRESNO, CA 93725



2 A-05590-18402-1-185723 22-1585-69

7022 2410 0000 2406 2402

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
- B. Received by (Printed Name) ☐ Addressee
- C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

- Service Type
- ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Mail Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

Signature of Addressee

Signature of Agent

Signature of Postmaster

WHOLESALE EQUIPMENT
FRESNO, INC.
3813 S GOLDENSTATE BLVD.
FRESNO, CA 93725

7022 2410 0000 2406 2402

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 2419

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

Postmark

WHOLESALE EQUIPMENT
OF FRESNO, INC.
P.O. BOX 2637
FRESNO, CA 93745

WHOLESALE EQUIPMENT
OF FRESNO, INC.
P.O. BOX 2637
FRESNO, CA 93745

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

WHOLESALE EQUIPMENT
OF FRESNO, INC.
P.O. BOX 2637
FRESNO, CA 93745



2. Article Number (PSN 7530-02-000-9053)

7022 2410 0000 2406 2419

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee
B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Registered MailTM
☐ Registered Mail Restricted Delivery
☐ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece

**WHOLESALE EQUIPMENT
OF FRESNO, INC.
P.O. BOX 2637
FRESNO, CA 93745**



2. Article Number (Transferred from service label)

9590 9407 7606 2122 1535 62
7022 2410 0000 2406 2419

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☒ Addressee
 B. Received by (Printed Name) C. Date of Delivery
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

3 Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece,

**WHOLESALE EQUIPMENT
FRESNO, INC.
3813 S GOLDENSTATE BLVD.
FRESNO, CA 93725**



2. Article Number (transfers from service label)

0590 9402 7196 3122 1535 69
7022 2410 0000 2406 2402

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FRESNO, CA

Service Type
Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

Mail

Mail Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PS Form 3811, July 2020 PSN 7530-02-000-9053

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **November 21, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Amanda G. Hebesha
ahebesha@wjhattorneys.com
Debbie Merritt (Assistant)
dmerritt@wjhattorneys.com

Attorneys for Defendants:
WHOLESALE EQUIPMENT OF FRESNO,
INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

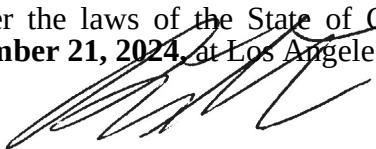
☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 21, 2024**, at Los Angeles, California.

Riley McIntire

Type/Print Name



Signature