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and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

JOSE MONDRAGON, an individual, on
behalf of himself and all others similarly
situated and aggrieved,

Plaintiff,

vs.

DEREK SAWYER HEATING, COOLING,
PLUMBING & ELECTRICAL, LLC, a
Delaware Limited Liability Company;
DEREK SAWYER SMART ENERGY
HEATING & AIR, INC., a California
Corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: CV-24-010302

**FIRST AMENDED CLASS ACTION & PAGA
REPRESENTATIVE ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (6) FAILURE TO REIMBURSE ALL
NECESSARY, BUSINESS-RELATED
EXPENSES;**
- (7) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (8) VIOLATION OF CALIFORNIA’S UNFAIR
COMPETITION LAW (“UCL”), CAL. BUS.
& PROF. CODE § 17200, *ET SEQ.*; AND**
- (9) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA’S PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”), §§ 2698, *ET
SEQ.***

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff JOSE MONDRAGON (“Plaintiff” or “MONDRAGON”), on behalf of himself and all
3 others similarly situated and aggrieved, by and through his attorneys, Abramson Labor Group, hereby
4 files this First Amended Class Action and Private Attorneys General Act of 2004 (“PAGA”)
5 Representative Action Complaint against Defendants DEREK SAWYER HEATING, COOLING,
6 PLUMBING & ELECTRICAL, LLC, a Delaware Limited Liability Company; DEREK SAWYER
7 SMART ENERGY HEATING & AIR, INC., a California Corporation; and DOES 1 through 25
8 inclusive, (collectively, “Defendants”), and states as follows:

9 **I. INTRODUCTION**

10 1. Plaintiff brings this class and representative action on behalf of himself, on behalf of a
11 class defined as all current and former hourly non-exempt employees of Defendants in California at any
12 time during the Class Period beginning four years prior to the filing of this Complaint through the present
13 (“Class Period”), and on behalf of all Aggrieved Persons who worked for Defendants as hourly, non-
14 exempt employees in California at any time during the period beginning one year prior to the PAGA
15 letter (defined below) through the present (“PAGA Period”).

16 2. This is also an enforcement action under the Labor Code Private Attorneys General Act
17 of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
18 available relief on behalf of Plaintiff, the State of California, and other current and former employees
19 who work or worked for Defendants in California as non-exempt, hourly employees and who received at
20 least one wage statement during their employment, and against whom one or more violations of any
21 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
22 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
23 forth in this complaint (“Aggrieved Employees”), at any time between one year and 65 days prior to the
24 filing of this amended complaint (i.e., October 8, 2023) until judgment (the “PAGA Period”). Plaintiff’s
25 share of civil penalties sought in this action does not exceed \$75,000.

26 3. Defendants’ business is operating throughout California as a service provider of
27 residential and commercial heating and cooling repair, installation, and cleaning services as well as solar
28 panel installation in California, with locations in Modesto, Fresno and Stockton but also serving Chico,

1 Yuba City, Gridley, Live Oak, Oroville, Olivehurst, Auburn, Lincoln, Rocklin, Roseville, Woodland,
2 Davis, Sacramento, Placerville, Folsom, Rancho Cordova, Elk Grove, Galt, Lodi, Valley Springs,
3 Stockton, French Camp, Lathrop, Manteca, Tracy, Discovery Bay, Brentwood, Livermore, Pleasanton,
4 Escalon, Sonora, Oakdale, Morada, Woodbridge, Ripon, Salida, Modesto, Patterson, Waterford, Ceres,
5 Turlock, Hughson, Riverbank, Keys, Merced, Fresno, Madera, Los Banos, Newman, Gustine, Walnut
6 creek, Selma.¹

7 4. Defendants' policy and practice is to deny earned wages, including premium and overtime
8 pay, to their nonexempt employees in California. Defendants do not provide their employees with legally
9 compliant meal periods and rest breaks nor premium pay in lieu thereof. Additionally, Defendants
10 require their employees to be present and to perform work uncompensated in excess of eight hours per
11 day and/or 40 hours per work week by mandating that these employees perform various forms of
12 compensable work off-the-clock including, but not limited to, (1) regularly returning to work from meal
13 periods early (before 30 minutes elapsed) to resume work due to interruptions such as having to rush
14 equipment to jobs in progress and (2) disarming and arming the alarm system and locking and unlocking
15 doors prior to clocking in or after clocking out for their shifts. Likewise, Defendants do not provide
16 minimum wages and overtime pay for this off-the-clock time. These off-the-clock waiting periods exist
17 for the sole benefit of Defendants and occurred frequently and regularly at Defendants' locations
18 throughout California. This illegal practice has been in effect by Defendants since at least the start of the
19 Class Period.

20 5. Moreover, Defendants fail to timely compensate employees for all wages earned upon
21 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
22 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of
23 himself and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime
24 compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

25 6. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned
26 wages and overtime compensation violates the California Labor Code and California's Unfair
27

28 ¹ <https://dereksawyers.com/> (last accessed December 15, 2024).

Competition Law, codified under California's Business & Professions Code.

7. Defendants fail to reimburse Plaintiff and Class Members for a variety of unreimbursed business expenses for personal cell phones required to clock in and out on the ADP phone application, to use GPS while driving to navigate to customers, and to communicate with Defendants' employees and customers.

8. Plaintiff brings a class action under the California Code of Civil Procedure section 382 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid minimum wages including for work performed off the clock; unpaid overtime wages; failing to keep and maintain accurate, required records; failing to provide timely and accurate wage statements; failing to timely pay all wages owed at separation; failing to reimburse all necessary, business-related expenses; and other related penalties and damages under the California Labor Code and California Business & Professions Code.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter because Defendants are licensed to do business in California, regularly conduct business in California, and committed and continue to commit the unlawful acts alleged herein in California.

10. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

11. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, and intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this

1 action, and that diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties
2 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

3 12. Venue lies properly with this Court, as it is the place where at least one defendant resides,
4 is incorporated or has its principal place of business, or a substantial amount of the events which gave
5 rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because
6 Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a
7 substantial portion of the transactions and occurrences related to this action occurred in this county.

8 13. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys General
9 Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current
10 or former employers for various civil penalties for violating the California Labor Code.

11 **III. PARTIES**

12 14. Plaintiff JOSE MONDRAGON ("Plaintiff" or "MONDRAGON") is or was a resident of
13 Modesto, California. Defendants employed Plaintiff MONDRAGON as an hourly-paid, non-exempt
14 employee for about 10 years from approximately May 2014 to April 12, 2024. MONDRAGON held the
15 position of Shop Manager. During his employment, Plaintiff MONDRAGON worked at Defendants'
16 location in Modesto, California located at 1001 Carver Rd., Modesto, California 95350. Plaintiff
17 MONDRAGON typically worked five days per week for 9-10 or more hours per day and at least about
18 forty (40) hours per week. At the time Plaintiff MONDRAGON'S employment ended, he was earning
19 \$25.00 per hour.

20 15. Defendant DEREK SAWYER HEATING, COOLING, PLUMBING & ELECTRICAL,
21 LLC ("DEREK SAWYER HEATING") is, on information and belief, a Delaware Limited Liability
22 Company Corporation doing business in California, listing its principal place of business at 201 East
23 Kennedy Boulevard, Suite 1600, Tampa, Florida 33602, and at all times hereinafter mentioned, is an
24 employer whose employees are engaged throughout this county, in the State of California. DEREK
25 SAWYER HEATING is operating as a service provider of residential and commercial heating and
26 cooling repair, installation, and cleaning services as well as solar panel installation in California. Upon
27 information and belief, DEREK SAWYER HEATING acquired DEREK SAWYER SMART ENERGY
28 HEATING & AIR, INC.

1 16. Defendant DEREK SAWYER SMART ENERGY HEATING & AIR, INC. (“DEREK
2 SAWYER SMART ENERGY”) is, on information and belief, a California Corporation doing business
3 in California, listing its principal place of business at 1001 Carver Road, Modesto, California 95350,
4 and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this
5 county, in the State of California. DEREK SAWYER SMART ENERGY is operating as a service
6 provider of residential and commercial heating and cooling repair, installation, and cleaning services as
7 well as solar panel installation in California. Upon information and belief, DEREK SAWYER SMART
8 ENERGY HEATING & AIR, INC. was acquired by DEREK SAWYER HEATING.

9 17. Defendants created the policies and procedures described herein and, at all times during
10 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

11 18. The practices and policies complained of by way of this Complaint are enforced
12 throughout the State of California, including in Modesto, California.

13 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
14 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but is
15 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
16 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
17 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
18 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
19 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
20 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
21 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
22 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
23 principal, was negligent in the selection and hiring, training, and supervision of each and every other
24 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
25 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
26 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
27 and that the acts of each Defendant are legally attributable to each of the other Defendant.

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1 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 20. At all times relevant herein, Defendants’ business is operating throughout California as
3 a service provider of residential and commercial heating and cooling repair, installation, and cleaning
4 services as well as solar panel installation in California.

5 21. Upon information and belief, Defendants are incorporated in California and maintain
6 their corporate operations headquarters, including Human Resources in Modesto, California. Upon
7 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
8 department at their operations headquarters in Modesto, California, which is responsible for
9 conducting Defendants’ recruiting and hiring of new employees, as well as communicating and
10 implementing Defendants’ company-wide policies, including timekeeping policies, to employees
11 throughout California. In particular, Plaintiff and other Class Members, on information and belief,
12 received the same standardized documents and/or written policies upon hire. Upon information and
13 belief, the use of standardized documents and/or written policies, including new hire documents,
14 indicate that Defendants dictated policies at the corporate-level and implemented them company-wide,
15 regardless of their employees’ assigned locations or positions. On information and belief, all
16 transactions regarding hiring, terminations, promotions, and pay increases, etc., relating to
17 Defendants’ California employees were submitted to and processed by Defendants’ HR department in
18 Modesto, California.

19 22. Upon information and belief, Defendants’ corporate records, business records, data, and
20 other information related to Defendants, including, in particular, HR records pertaining to Defendants’
21 California employees, are also maintained at Defendants’ operations headquarters in Modesto,
22 California.

23 23. At all relevant times, Defendants have been, and continue to be, a “person” as that term
24 is defined under California Business & Professions Code section 17021 and California Labor Code
25 sections 1-29.5.

26 24. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
27 nonexempt employee in the position of Shop Manager in California during the Class Period.
28

1 25. At all times relevant herein, Plaintiff and Class Members were assigned to and required
2 and permitted to work without pay while performing tasks including, but not limited to: performing
3 inventory checks; opening up the shop by disarming the alarm and unlocking the entry gate, warehouse,
4 and office doors; dispatching Claimants to jobs; driving the company truck to the office and customer
5 locations to deliver equipment for Claimants to perform services related to heating and cooling;
6 installation, repair, and removal of equipment related to heating and air conditioning and installation of
7 solar panels; and minor vehicle repairs to company trucks. Plaintiff and Class Members were not
8 properly compensated for some of this work.

9 26. At all times relevant herein, Plaintiff and Class Members worked a substantial amount of
10 time while off-the-clock—meaning they were not punched in for work—and therefore, those working
11 hours were not recorded and then compensated. This off-the-clock time primarily occurred because (1)
12 Plaintiff and Class Members had to disarm and arm the alarm system and lock and unlock doors prior
13 to clocking in or after clocking out; and (2) Plaintiff and Class Members were interrupted during meal
14 periods requiring them to resume work early (before 30 minutes had elapsed) by rushing equipment to
15 jobs in progress; to monitor and respond to messages before and after their shifts or else while entirely
16 off-shift. Plaintiff's and Class Members' off-the-clock time was never subsequently added and,
17 therefore, remains uncompensated.

18 27. At all times relevant herein, Plaintiff and Class Members were required to perform work
19 during their meal periods in the form of (1) continuing to perform their assigned services on jobs in
20 progress that cut into their 30-minute meal periods and (2) returning early from their meal periods to
21 address interruptions that required equipment to be delivered to coworkers whose jobs were in progress,
22 both of which were largely because of time constraints in completing all scheduled jobs during their
23 shifts. Defendants do not compensate Plaintiff and Class Members for this compensable time worked
24 off the clock.

25 28. At all times relevant herein, Defendants establish a mechanism by which Class Members
26 could report missed, late, or short meal periods on a daily basis.

27 29. Likewise, at all times relevant herein, Plaintiff and Class Members' meal periods and rest
28 breaks were noncompliant because they were not off-duty because Plaintiff and Class Members were

1 required to monitor and respond to interruptions on their personal cell phones and were regularly
2 interrupted with such messages that required returning to work early from their rest breaks and meal
3 periods. These meal periods and rest breaks were noncompliant and not cured by premium
4 compensation, and the meal periods were also not compensated for purposes of Defendants' obligation
5 to pay minimum wages for all hours worked.

6 30. At all times relevant herein, Plaintiff and Class Members were assigned to and required
7 to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-
8 length 30-minute, uninterrupted, off-duty meal periods. Accordingly, Plaintiff's and Class Members'
9 meal periods were on-duty for which Defendants failed to compensate Plaintiff and Class Members with
10 (1) premium pay for meal periods under 30 minutes and (2) the time worked that was on-duty during
11 these meal periods.

12 31. Moreover, Plaintiff and Class Members regularly worked in excess of 10 hours without
13 a second 30-minute meal period, despite not signing valid meal period waivers.

14 32. At all times relevant herein, Plaintiff and Class Members were assigned to and required
15 and permitted to work shifts lasting over four hours and were not authorized nor permitted to take full,
16 net 10-minute rest breaks during each shift or 4-hour work period.

17 33. At all times relevant herein, Defendants failed to authorize and permit Plaintiff and Class
18 Members to take full, net 10-minute rest breaks during the Class Period. At the direction of Defendants
19 and/or Defendants' knowledge and acquiescence, Plaintiff and Class Members routinely missed their
20 entire 10-minute rest breaks, at least once per shift. Accordingly, all rest breaks were noncompliant for
21 which Defendants should have compensated Plaintiff and Class Members with premium pay for
22 noncompliant rest breaks but failed to do so.

23 34. At all times relevant herein, Plaintiff and Class Members worked in excess of eight hours
24 per workday or 40 hours per work week. Defendants failed to pay for all hours worked in excess of
25 eight hours per day, and when compensated for overtime, failed to pay the correct amount of overtime
26 by under-recording and underreporting Plaintiff's and Class Members' total hours worked. Defendants
27 failed to pay current and former hourly, nonexempt employees one and one-half times (1½) their regular
28 rate of pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants

1 also failed to pay their employees at a rate no less than twice the regular rate of pay for work in excess
2 of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day
3 of work in a workweek.

4 35. During the Class Period, Defendants require their hourly, nonexempt employees to
5 perform compensable work while off the clock, including performing compensable work during their
6 meal periods and before and after their shifts. Accordingly, during the Class Period, Defendants did not
7 provide minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and the Class
8 endured.

9 36. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
10 of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all
11 hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly,
12 nonexempt employees should be, but were not compensated for, both straight hours and overtime hours
13 worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first
14 eight hours worked on the seventh consecutive day of work in a workweek.

15 37. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of
16 and required Plaintiff to perform compensable work during meal periods. Supervisors throughout
17 California were aware that Plaintiff and others similarly situated were performing work during these
18 times without proper wages or overtime compensation.

19 38. In light of Defendants' failure to record employees' off-the-clock time that employees
20 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
21 Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore,
22 employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed
23 to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked
24 and all rates in effect during the pay period.

25 39. At all times relevant herein, Defendants' wage statements issued to Plaintiff and Class
26 Members were also noncompliant because they did not list the correct, legal name of the employer entity.

27 40. At all times relevant herein, the same unlawful practices and procedures described above
28 affect hourly, nonexempt workers of Defendants employed in California.

1 41. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all
2 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in
3 accordance with law and, because Class Members were not compensated for time worked during meal
4 periods, for shifts worked over eight hours in duration, Defendants also did not pay nonexempt
5 employees all overtime wages in accordance with law.

6 42. At all times relevant herein, Defendants failed to reimburse Plaintiff and Class Members
7 for expenses for personal cell phones required to clock in and out on the ADP phone application, to use
8 GPS while driving to navigate to customers, and to communicate with Defendants' employees and
9 customers.

10 43. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
11 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
12 Class for failing to pay minimum wages, failing to pay overtime wages, failing to pay all wages owed
13 every pay period, failing to provide legally compliant meal periods and rest breaks or premium
14 compensation in lieu thereof, failing to provide timely and accurate wage statements, failing to pay all
15 wages owed upon separation, failing to reimburse all necessary, business-related expenses, and unfair
16 competition.

17 44. Plaintiff has complied with the procedures for bringing suit specified in California Labor
18 Code section 2699.3. By letter dated October 8, 2024 and amended letter dated December 20, 2024,
19 Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency
20 ("LWDA"), and Defendants, of the specific provisions of the Labor Code alleged to have been violated,
21 including the facts and theories to support the alleged violations.

22 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

23 45. Plaintiff is a member of and seeks to be the representative for the Class of similarly
24 situated employees who all have been exposed to, have suffered, and/or were permitted to work under
25 Defendants' unlawful employment practices as alleged herein.

26 46. Plaintiff brings his first through eighth causes of action on behalf of himself and on behalf
27
28

of the following Class² of persons:

All current and former hourly non-exempt employees of DEREK SAWYER HEATING, COOLING, PLUMBING & ELECTRICAL, LLC and/or DEREK SAWYER SMART ENERGY HEATING & AIR, INC. in California at any time during the Class Period through the present.

47. This action is appropriately suited for a class action pursuant to Code of Civil Procedure section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives.

48. Numerosity and Ascertainability. The size of the Class makes a class action both necessary and efficient. On information and belief, the proposed Class includes hundreds of current and former employees at Defendants' locations in California. Members of the Class are ascertainable through Defendants' records but are so numerous that joinder of all individual Class Members would be impractical.

49. Predominant Common Questions of Law and Fact. Pursuant to section 382, common questions of law and fact exist as to all Class Members. These questions predominate over any individualized issues. These common questions include but are not limited to:

- a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
- b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California for the total hours worked during the Class Period;
- d. Whether Defendants have engaged in a common course of requiring or permitting their hourly, nonexempt employees to not report all hours worked during the Class Period;

² Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

- 1 e. Whether Defendants have engaged in a common course of failing to maintain true and
2 accurate time records for all hours worked by their nonexempt employees;
- 3 f. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a
4 pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiff
5 and members of the Class who worked as hourly, nonexempt employees in California during
6 the Class Period;
- 7 g. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and Class Members
8 who worked as hourly, nonexempt employees in California during the Class Period from
9 taking full-length off-duty, 30-minute meal periods by imposing unreasonable time
10 windows/work schedules that required Plaintiff and Class Members to forgo meal periods to
11 complete their daily-assigned jobs on time;
- 12 h. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
13 of the Class who worked as hourly, nonexempt employees in California during the Class
14 Period from taking full-length off-duty, 30-minute meal periods for their second meal periods
15 for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal
16 periods were not waived by mutual consent;
- 17 i. Whether Defendants engaged in a pattern or practice of failing to properly record the start and
18 stop times that Plaintiff and Class Members took their meal periods;
- 19 j. Whether Defendants engaged in a pattern or practice of failing to properly compensate
20 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
21 California during the Class Period for missed, untimely, or on-duty meal periods as required
22 by California law;
- 23 k. Whether Defendants violated section 11 of the applicable California Industrial Welfare
24 Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the
25 Class who worked as hourly, nonexempt employees in California during the Class Period with
26 timely, off-duty, 30-minute meal periods;
- 27 l. Whether Defendants engaged in an unfair practice and violated California Business and
28 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of

- 1 the Class who worked as hourly, nonexempt employees in California during the Class Period
2 with their statutory, off-duty, meal periods;
- 3 m. Whether Defendants maintained accurate time records of off-duty, 30-minute meal periods
4 taken by Plaintiff and members of the Class during the Class Period in accordance with section
5 7 of the applicable IWC Wage Order(s);
- 6 n. Whether Defendants engaged in a pattern or practice of failing to properly compensate
7 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
8 California during the Class Period for failing to provide full-length 10-minute rest breaks as
9 contemplated by California law for work periods in excess of four hours;
- 10 o. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable
11 IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute,
12 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
13 hours;
- 14 p. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
15 overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- 16 q. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
17 double time for hours worked in excess of 12 hours in a day;
- 18 r. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
19 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked
20 in excess of eight hours in a day;
- 21 s. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
22 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight
23 hours worked in a day on the seventh consecutive day in a workweek and double time for all
24 hours worked in excess of eight hours on such days;
- 25 t. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure
26 to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and
27 members of the Class to perform for the benefit of Defendants;
- 28

- u. Whether Defendants violated California Labor Code section 2802 by failing to reimburse Plaintiff and Class Members for all necessary business-related expenses they incurred;
- v. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to include payments for missed, untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
- w. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to accurately state Defendants' legal name, to the detriment of Plaintiff and the Class;
- x. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to accurately state the total hours worked and therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;
- y. Whether Defendants have engaged in a common course of failing to timely pay nonexempt employees all wages due upon termination;
- z. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
- aa. The nature and extent of class-wide injury and the measure of damages for the injury.

50. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other members of the Class working for Defendants in California, was subjected to Defendants' policy and practice of refusing to properly and fully pay minimum wages, overtime wages, meal period and rest break premiums, failing to reimburse necessary, business-related expenses, and failing to timely pay all wages upon separation in violation of California wage and hour laws. Plaintiff's job duties were and are typical of those of other class members who worked for Defendants in California.

51. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of the Class because his individual interests are consistent with and not antagonistic to the interests of the Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute this case as a class action and are experienced labor and employment attorneys who have successfully litigated other cases involving similar issues.

52. Superiority of Class Mechanism. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class

1 action would permit the large number of injured parties to prosecute their common claims in a single
2 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
3 resources. A class action is the only practical way to avoid the potentially inconsistent results that
4 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
5 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
6 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
7 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
8 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
9 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
10 over again.

11 **VI. FIRST CAUSE OF ACTION**

12 **Failure to Provide Meal Periods**

13 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 4-2001, § 11**

14 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

15 53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
16 as if fully set forth herein.

17 54. California Labor Code section 226.7(a) provides, "No employer shall require any
18 employee to work during any meal or rest period mandated by an applicable order of the Industrial
19 Welfare Commission."

20 55. IWC Wage Order No. 4-2001 (11)(A) provides, in pertinent part: "No employer shall
21 employ any person for a work period of more than five (5) hours without a meal period of not less than
22 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work
23 the meal period may be waived by mutual consent of the employer and the employee."

24 56. Section 512(k) of the California Labor Code provides, in pertinent part, that: "An
25 employer may not employ an employee for a work period of more than five hours per day without
26 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
27 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
28 both the employer and employee. An employer may not employ an employee for a work period of more

1 than 10 hours per day without providing the employee with a second meal period of not less than 30
2 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
3 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

4 57. Defendants did not provide Plaintiff and other Class Members with legally compliant.,
5 timely meal periods, because Plaintiff and other Class Members were required to begin their meal periods
6 after the end of the fifth hour when they were working on a job in progress that was not complete by the
7 time a legally compliant meal period should have started.

8 58. Defendants did not provide Plaintiff and other Class Members with legally compliant, off-
9 duty meal periods, because Plaintiff and other Class Members were required to monitor and respond to
10 calls and messages on their personal cell phones and were regularly interrupted with such calls and
11 messages that required returning to work early from their meal periods.

12 59. Defendants also did not schedule second meal periods and had no policy for permitting
13 and authorizing Plaintiff and other employees to take second 30-minute meal periods on days they
14 worked in excess of 10 hours in one day. Because of Defendants’ companywide practice of denying
15 hourly, nonexempt employees second 30-minute meal periods, Plaintiff and other Class Members were
16 not relieved of all duties such that they could take full-length second 30-minute meal periods and instead
17 had to work during a portion of that time allotted for meal periods. Accordingly, Defendants failed to
18 provide all meal periods in violation of California Labor Code sections 226.7 and 512. Defendants knew
19 or should have known that their companywide adoption of the requirement that employees skip their
20 meal period without executing waivers to do so would result in a failure to provide Plaintiff and other
21 Class Members with full and timely meal periods as required by the applicable IWC Wage Order(s) and
22 Labor Code sections 226.7 and 512(a). Furthermore, Plaintiff and other Class Members did not sign
23 valid meal period waivers on days that they were entitled to meal periods but were not relieved of all
24 duties.

25 60. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal
26 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
27 one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and other
28 Class Members at the correct rate of pay for premium wages because Defendants failed to include all

1 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
2 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium
3 pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed
4 to provide Plaintiff and other Class Members compliant meal periods and failed to pay the full meal
5 period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

6 61. By their actions in requiring their employees to work during a portion of their meal periods
7 and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty
8 meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC
9 Wage Order No. 4-2001 and is liable to Plaintiff and the Class.

10 62. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived
11 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
12 section 11 of IWC Wage Order No. 4-2001, in the amount of one additional hour of pay at the employee's
13 regular rate of pay for each work period during each day in which Defendants failed to provide their
14 hourly, nonexempt employees with timely, statutory, off-duty meal periods.

15 **VII. SECOND CAUSE OF ACTION**

16 **Failure to Provide Rest Breaks**

17 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

18 **IWC Wage Order No. 4-2001, § 12**

19 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

20 63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
21 as if fully set forth herein.

22 64. California Labor Code section 226.7(a) provides, "No employer shall require any
23 employee to work during any meal or rest period mandated by an applicable order of the Industrial
24 Welfare Commission."

25 65. IWC Wage Order No. 4-2001, section (12)(A) provides, in pertinent part: "Every
26 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
27 be in the middle of each work period. The authorized rest period time shall be based on the total hours
28 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

1 However, a rest period need not be authorized for employees whose total daily work times is less than
2 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
3 there shall be no deduction from wages.”

4 66. IWC Wage Order No. 4-2001, section (12)(B) provides, “If an employer fails to provide
5 an employee with a rest period in accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
7 workday that the rest period is not provided.”

8 67. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during
9 the Class Period. Plaintiff and members of the Class were routinely required to work during part of or
10 even their entire rest breaks at the direction of Defendants and/or with Defendants’ knowledge and
11 acquiescence.

12 68. Furthermore, as with meal periods, Defendants’ staffing and job-assignment policies
13 required employees to forgo their 10-minute rest breaks, entirely preventing Plaintiff and Class Members
14 from being relieved of all duty in order to take compliant rest breaks; these practices forced Plaintiff and
15 other Class Members to remain on duty for part of their rest breaks or return to duty upon being
16 interrupted. That is, Plaintiff and Class Members’ rest breaks were noncompliant because they were not
17 off-duty not the requisite net 10-minute periods; Plaintiff and Class Members were required to monitor
18 and respond to calls and messages on their personal cell phones and were regularly interrupted with such
19 calls and messages that required returning to work early from their rest breaks or else forgoing them
20 entirely. As a result, Plaintiff and Class Members would work shifts in excess of 3.5 hours without the
21 net 10-minute rest breaks to which they were entitled. More specifically, throughout his employment,
22 during 8-hour or longer shifts, Plaintiff and Class Members regularly worked during the entirety of their
23 10-minute rest breaks by using that time to continue performing work for Defendants.

24 69. At the same time, Defendants implemented a companywide policy to not pay rest break
25 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one
26 additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other Class
27 Members at the correct rate of pay for premium wages because Defendants failed to include all forms of
28 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate

1 of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for
2 missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class
3 Members were denied compliant rest breaks and Defendants failed to pay the full rest break premiums
4 due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s).

5 70. Defendants' unlawful conduct alleged herein occurred in the course of employment of
6 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
7 Complaint.

8 71. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class
9 have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during
10 the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one
11 additional hour of pay at the employee's regular rate of compensation for each work period during each
12 day in which Defendants failed to provide employees with compliant and/or paid rest breaks.

13 **VIII. THIRD CAUSE OF ACTION**

14 **Failure to Pay Minimum Wages**

15 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

16 **and 1197; IWC Wage Order No. 4-2001, § 4**

17 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

18 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
19 as if fully set forth herein.

20 73. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a
21 day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
22 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
23 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
24 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
25 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
26 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
27 of an employee."

28 74. Labor Code section 1197 provides: "The minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
2 minimum so fixed is unlawful.”

3 75. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
4 for all hours worked in amounts set by state law.

5 76. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to
6 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
7 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
8 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
9 attorney’s fees, and costs of suit.”

10 77. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6
11 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
12 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
13 equal to the wages unlawfully unpaid and interest thereon.”

14 78. Pursuant to IWC Wage Order No. 4-2001, section (2)(H), at all times material hereto,
15 “hours worked” includes “the time during which an employee is subject to the control of an employer,
16 and includes all the time the employee is suffered or permitted to work, whether or not required to do
17 so.”

18 79. At all times relevant during the liability period, under the provisions of IWC Wage Order
19 No. 4-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a
20 sum according to proof for the time worked, but not compensated.

21 80. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
22 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
23 amount equal to the unpaid minimum wages and interest thereon.

24 81. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
25 their attorneys’ fees, costs, and interest according to proof.

26 82. At all times relevant during the liability period, Defendants willfully failed and refused,
27 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

28 83. As described above, Plaintiff and other Class Members regularly began and ended their

1 shifts by performing compensable work by disarming and arming the alarm system and unlocking and
2 locking doors prior to clocking in and after clocking out, so in those instances, they that off-the-clock
3 time was never recorded, and therefore, never compensated.

4 84. As described above, Defendants required Plaintiff and other Class Members to work
5 during their meal periods so that they would complete their daily-assigned jobs in a timely manner. That
6 is, Plaintiff and other Class Members were required to monitor and respond to calls and messages on
7 their personal cell phones and were regularly interrupted with such calls and messages that required
8 returning to work early from their meal periods. Also, Defendants did not pay at least minimum wages
9 for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-
10 the-clock hours did not qualify for overtime premium pay, Defendants did not pay at least minimum
11 wages for those hours worked off-the-clock.

12 85. Defendants' unlawful conduct alleged herein occurred in the course of employment of
13 Plaintiff and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have
14 done so continuously throughout the filing of this complaint.

15 86. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
16 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling
17 them to damages, injunctive relief or restitution. Plaintiff, on behalf of himself and on behalf of the Class,
18 seeks damages and all other relief allowable including all wages due while working as Defendants'
19 hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those
20 employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections
21 200, *et seq.*

22 87. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-
23 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor
24 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

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1 **IX. FOURTH CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 4-2001, § 3**

4 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

5 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
6 as if fully set forth herein.

7 89. Pursuant to section 3 of IWC Wage Order No. 4-2001; California Code of Regulations,
8 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
9 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all
10 overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for
11 hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on
12 the seventh consecutive work day, with double time after eight hours on the seventh day of any work
13 week, or after 12 hours in any work day.

14 90. Plaintiff and members of the Class were and are nonexempt employees entitled to the
15 protections of IWC Wage Order No. 4-2001; California Code of Regulations, Title 8, section 11040,
16 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the
17 Class Period, Plaintiff and other members of the Class consistently worked five days per week for shifts
18 of eight hours or more. During the course of Plaintiff's employment, and during the course of the
19 employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
20 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

21 91. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
22 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
23 work performed during the four years preceding the filing of this Complaint, based on appropriate
24 calculations of the "total remuneration" for each workweek.

25 92. In violation of state law, Defendants have knowingly and willfully refused to perform
26 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
27 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
28 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking

1 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
2 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
3 Court.

4 93. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
5 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
6 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
7 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts
8 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

9 94. Defendants' conduct described herein violates IWC Wage Order No. 4-2001; California
10 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
11 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
12 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
13 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of
14 suit.

15 **X. FIFTH CAUSE OF ACTION**

16 **Failure to Pay All Wages Owed Upon Separation**

17 **in Violation of Cal. Labor Code §§ 201–203**

18 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

19 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
20 as if fully set forth herein.

21 96. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

23 97. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written
24 contract for a definite period quits his or his employment, his or his wages shall become due and payable
25 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his
26 intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.”

27 98. Section 203 of the California Labor Code provides that if an employer willfully fails to
28 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the

1 employer is liable for penalties in the form of continued compensation up to 30 workdays.

2 99. At all times relevant during the liability period, Plaintiff and the other members of the
3 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
4 section 201, upon Plaintiff's and the Class Members' separation dates, Defendants were required to pay
5 Plaintiff and the Class Members all wages earned. Plaintiff was terminated, but Defendants did not pay
6 Plaintiff all wages owed at that time or since his termination, in violation of Labor Code section 201.

7 100. At the time of Plaintiff's and the Class Members' respective separation dates, Plaintiff and
8 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
9 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
10 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
11 separation from employment with Defendants as required by California Labor Code sections 201 and
12 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and the Class
13 Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but
14 in excess of the jurisdictional minimum of this Court.

15 101. Defendants' failure to pay Plaintiff and the Class respective wages due and owed to them
16 was willful, and done with the wrongful and deliberate intention of injuring Plaintiff and the Class
17 Members and in conscious disregard of their rights.

18 102. Defendants' willful failure to pay former employee Plaintiff and the Class all of the wages
19 due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an
20 employee's wages will continue as a penalty up to 30 days from the time the wages were due. Therefore,
21 former employee Plaintiff and the Class Members are each entitled to penalties pursuant to Labor Code
22 section 203.

23 **XI. SIXTH CAUSE OF ACTION**

24 **Failure to Reimburse All Necessary, Business-Related Expenses**

25 **in Violation of Cal. Labor Code § 2802**

26 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

27 103. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
28 as if fully set forth herein.

1 104. California Labor Code section 2802 provides that “An employer shall indemnify his or
2 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
4 unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful.”

5 105. During the applicable statutory period, Plaintiff and Class Members incurred necessary
6 expenditures and losses in direct consequence of the discharge of their employment duties and their
7 obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for
8 these expenditures or losses. Such expenses include, but are not limited to, expenses for personal cell
9 phones required to clock in and out on the ADP phone application, to use GPS while driving to navigate
10 to customers, and to communicate with Defendants’ employees and customers.

11 106. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary
12 business-related expenses and losses.

13 107. Plaintiff and Class Members are entitled to recover their necessary unreimbursed
14 business-related expenses and losses incurred during the course and scope of their employment, plus
15 interest accrued from the date on which the employee incurred the necessary expenditures at the same
16 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section
17 2802.

18 **XII. SEVENTH CAUSE OF ACTION**

19 **Failure to Furnish Timely and Accurate Wage Statements**

20 **Upon Payment of Wages in Violation of Cal. Labor Code § 227.3**

21 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

22 108. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
23 as if fully set forth herein.

24 109. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
25 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or her
26 employees . . . an itemized statement in writing showing (1) gross wages earned, (2) total hours worked
27 by the employee . . . , (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written

orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer. Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney’s fees.”

110. First, Defendants issued wage statements to Plaintiff and Class Members that failed to provide the accurate legal name of the employer; they read “Derek Sawyer Heating, Cooling” instead of “Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC.”

111. Defendants failed to accurately record the actual regular and overtime hours worked by Plaintiff and Class Members.

112. Plaintiff and Class Members were damaged by these failures because, among other things, the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to them.

113. Plaintiff and Class Members request recovery of Labor Code section 226(e) penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to Labor Code section 226(e), in a sum as provided by the Labor Code and/or other statutes.

XIII. EIGHTH CAUSE OF ACTION

Violations of California’s Unfair Competition Law (“UCL”),

California Business and Professions Code §§ 17200, *et seq.*

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

114. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

115. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

1 116. Through their actions alleged herein, Defendants have engaged in unfair competition
2 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,
3 and/or fraudulent business practices under the UCL.

4 117. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
5 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
6 to pay Class Members wages and compensation they earned through labor provided, and failing to
7 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but
8 is not limited to, issuing wage statements containing false and/or misleading information about the time
9 the Class Members worked and the amount of wages or compensation due.

10 118. Defendants' violations of California wage and hour laws and illegal payroll practices or
11 payment policies constitute a business practice because they were done repeatedly over a significant
12 period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

13 119. Plaintiff has standing to assert this claim because he has suffered injury in fact and has
14 lost money as a result of Defendants' conduct.

15 120. For the four years preceding the filing of this action, Plaintiff and Class Members have
16 suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from
17 Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from
18 engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

19 **XIV. NINTH CAUSE OF ACTION**

20 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

21 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

22 **(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

23 121. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
24 as if fully set forth herein.

25 122. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
26 Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and
27 Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable
28 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought

on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

123. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

124. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

125. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in section 2699.5, after the following requirements have been met:

- a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee’s Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

- a. The aggrieved employee shall give written notice by online filing (“Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the

California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

- b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency 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 employee may commence a civil action pursuant to Section 2699.

127. On October 8, 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 notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and DEREK SAWYER HEATING, COOLING, PLUMBING & ELECTRICAL, LLC dated October 8, 2024 is attached hereto as "**Exhibit 1.**" Exhibit 1 is incorporated into this Complaint by reference.

128. On December 20, 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 original notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff's first amended written notice to the LWDA, DEREK SAWYER HEATING, COOLING, PLUMBING & ELECTRICAL, LLC, and DEREK SAWYER SMART ENERGY HEATING & AIR, INC. dated December 20, 2024 is attached hereto as "**Exhibit 2.**" Exhibit 2 is incorporated into this Complaint by reference.

129. As of the respective filing dates of the initial complaint and this First Amended Complaint, over 65 days have passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in this Complaint. Thus, Plaintiff has satisfied the administrative

1 prerequisites under California Labor Code section 2699.3(a) and (c) to recover civil penalties against all
2 defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
3 204, 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

4 130. Labor Code section 558(a) provides that “[a]ny employer or other person acting on behalf
5 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
6 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
7 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
8 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
9 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
10 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
11 underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this
12 section are in addition to any other civil or criminal penalty provided by law.”

13 131. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
14 employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating
15 various sections of the California Labor Code as set forth above.

16 132. As set forth below, Defendants have violated numerous provisions of both the Labor Code
17 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 18 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
19 Order(s) for Defendants’ failure to provide Plaintiff and other Class Members with
20 compliant meal periods and/or rest breaks, as set forth above;
- 21 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
22 IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other Class
23 Members with at least minimum wages for all hours worked as set forth above;
- 24 c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
25 Defendants’ failure to compensate Plaintiff and other Class Members with overtime wages
26 for all hours worked in excess of eight in one day or 40 in one week and double time for
27 all hours worked in excess of 12 hours, as set forth above;
- 28 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)

1 for failure to provide accurate and complete wage statements to Plaintiff and other Class
2 Members as set forth above;

- 3 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
4 for failure to maintain payroll records. California Labor Code section 1198 provides that
5 the maximum hours of work and the standard conditions of labor shall be those fixed by
6 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
7 1198 further provides that “[t]he employment of any employees for longer hours than
8 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
9 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
10 time records showing when the employee begins and ends each work period and meal
11 period. During the relevant time period, Defendants failed, on a companywide basis, to
12 keep records of meal period start and stop times for Plaintiff and other non-party aggrieved
13 employees in violation of section 1198. California Labor Code section 1174(d) provides
14 that “[e]very person employing labor in this state shall . . . [k]eep a record showing the
15 names and addresses of all employees employed and the ages of all minors” and “[k]eep,
16 at a central location in the state or at the plants or establishments at which employees are
17 employed, payroll records showing the hours worked daily by and the wages paid to, and
18 the number of piece-rate units earned by and any applicable piece rate paid to, employees
19 employed at the respective plants or establishments” During the relevant time period,
20 and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
21 accurate payroll records for Plaintiff and other non-party aggrieved employees showing
22 the daily hours they actually worked and the wages paid thereto as a result of failing to
23 record the off-the-clock hours that they worked;
- 24 f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
25 upon termination as set forth above;
- 26 g. Violations of Labor Code section 204 for failure to pay all earned wages during
27 employment as set forth above;
- 28 h. Violations of Labor Code section 2802 for failure to reimburse employees for all

necessary, business-related expenses incurred during employment as set forth above;

i. Plaintiff and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and

j. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

133. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California Against All Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

134. In addition, Plaintiff seeks and is entitled to sixty-five percent (65%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and thirty-five percent (35%) to all aggrieved employees.

135. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf of the general public, respectfully requests that this Court find against all defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. One hour of wages due to Plaintiff and each Class Member for each work period of more than four hours when they did not receive an uninterrupted 10-minute rest break;
5. One hour of wages due to Plaintiff and each Class Member for each work period of more than five hours when they did not receive an uninterrupted 30-minute meal period;

6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;

7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits from the unlawful business practices of Defendants;

8. For waiting time penalties pursuant to Labor Code section 203;

9. For reimbursement of business expenses under California Labor Code section 2802;

10. Statutory penalties under Labor Code section 226(e);

11. For penalties pursuant to Labor Code sections 201, 202, 203, 204, 206, 210, 225.5, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;

12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;

13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;

14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;

15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;

17. Accounting of Defendants' records for the liability period;

18. General, special, and consequential damages, to the extent allowed by law; and

19. All such other and further relief that the Court may deem just and proper.

Dated: February 26, 2025

ABRAMSON LABOR GROUP

By:


Cheryl A. Kenner

Attorneys for Plaintiff JOSE MONDRAGON
and all others similarly situated and aggrieved

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Dated: February 26, 2025

By: *Cheryl Kenner*
Cheryl A. Kenner

Attorneys for Plaintiff JOSE MONDRAGON
and all others similarly situated and aggrieved

EXHIBIT 1

October 8, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC
Attn: Legal Department
1001 Carver Rd.
Modesto, CA 95350

Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC
Attn: Legal Department
201 E. Kennedy Blvd., Ste. 1600
Tampa, FL 33602

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR
CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Derek Sawyer
Heating, Cooling, Plumbing & Electrical, LLC

From: Jose Mondragon, on behalf of himself and all other current and former hourly
nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Jose Mondragon (“Mr. Mondragon”) to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Mondragon, “Claimants”) who have been injured by Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC’s (“Derek Sawyer Heating”) violations of the California Labor Code. Mr. Mondragon, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt

employees of Derek Sawyer Heating, 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.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Derek Sawyer Heating provides residential and commercial heating and cooling repair, installation, and cleaning services as well as solar panel installation in California, with locations in Modesto, Fresno and Stockton but also serving Chico, Yuba City, Gridley, Live Oak, Oroville, Olivehurst, Auburn, Lincoln, Rocklin, Roseville, Woodland, Davis, Sacramento, Placerville, Folsom, Rancho Cordova, Elk Grove, Galt, Lodi, Valley Springs, Stockton, French Camp, Lathrop, Manteca, Tracy, Discovery Bay, Brentwood, Livermore, Pleasanton, Escalon, Sonora, Oakdale, Morada, Woodbridge, Ripon, Salida, Modesto, Patterson, Waterford, Ceres, Turlock, Hughson, Riverbank, Keys, Merced, Fresno, Madera, Los Banos, Newman, Gustine, Walnut creek, Selma.

Claimant Mr. Mondragon worked for Derek Sawyer Heating at its Modesto location as an hourly, nonexempt employee in the position of Shop Manager, earning \$25.00 per hour from approximately May 2014 through approximately April 12, 2024. Mr. Mondragon, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in providing installation, repair, and removal of heating and cooling equipment and other heating- and cooling-related services to residential and commercial customers. As part of their employment with Derek Sawyer Heating, Mr. Mondragon and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work—some without pay—while performing tasks collectively including, but not limited to, performing inventory checks; opening up the shop by disarming the alarm and unlocking the entry gate, warehouse, and office doors; dispatching Claimants to jobs; driving the company truck to the office and customer locations to deliver equipment for Claimants to perform services related to heating and cooling; installation, repair, and removal of equipment related to heating and air conditioning and installation of solar panels; and minor vehicle repairs to company trucks.

Claimant Mr. Mondragon regularly worked (5) days per week for 10 hours or more hours per day. During the entire course of his employment, Derek Sawyer Heating failed to provide Mr. Mondragon and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Derek Sawyer Heating has also failed to pay minimum wages to Mr. Mondragon and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 4-2001. As a consequence, Derek Sawyer Heating has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 4-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Derek Sawyer Heating has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Derek Sawyer Heating has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Derek Sawyer Heating has failed and continues to fail to provide timely, accurate wage statements to Mr. Mondragon and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Derek Sawyer Heating, including Mr. Mondragon, Derek Sawyer Heating has violated Labor Code section 203 by failing to pay all wages due upon separation. Derek Sawyer Heating has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for cell phone expenses, in violation of Labor Code section 2802. Mr. Mondragon is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Mondragon intends to bring an action against Derek Sawyer Heating under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Mondragon was employed by Derek Sawyer Heating from approximately May 2014 through approximately April 12, 2024 as a Shop Manager. For a period of at least four (4) years prior to October 2024, but for our purposes here, one (1) year prior, Derek Sawyer Heating has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Derek Sawyer Heating has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 4-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because (1) Claimants had to disarm and arm the alarm system and lock and unlock doors prior to clocking in or after clocking out; and (2) Claimants were interrupted during meal periods requiring them to resume work early (before 30 minutes had elapsed) by rushing equipment to jobs in progress; to monitor and respond to messages before and after their shifts or else while entirely off-shift. Claimants’ off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Additionally, Defendant

¹ Without limitation, Mr. Mondragon, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

enforces practices that effectively require Claimants to perform work during their meal periods and rest breaks, the effects of which Defendant could have mitigated by increasing staff to at least provide coverage for other employees. However, Defendant instead chose to instruct Claimants to remain on call, and therefore on-duty, during their meal periods and rest breaks and to work through their rest breaks when staff were in demand. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Derek Sawyer Heating's part to provide compliant meal periods and rest breaks. With that, Derek Sawyer Heating's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Derek Sawyer Heating's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Derek Sawyer Heating's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 4-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Derek Sawyer Heating failed to authorize and permit timely, full-length meal periods for Mr. Mondragon and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 4-2001. Mr. Mondragon and Claimants regularly took their meal periods late—after the end of the fifth hour, because work remained that needed attention and could not wait like an unexpected need to deliver equipment for jobs in progress. Similarly, Mr. Mondragon and Claimants were required to perform work during their meal periods due to interruptions while on their meal periods, which caused their meal periods to be less than 30 minutes. Despite these meal period interruptions and meal periods taken late, Derek Sawyer Heating did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Claimants also worked 12 hours without a second meal period despite not signing valid second-meal period waivers. Nonetheless, Derek Sawyer Heating did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Derek Sawyer Heating required Mr. Mondragon and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 4-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Derek Sawyer Heating likewise failed to authorize and permit Mr. Mondragon and all other similarly aggrieved employees to take full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 4-2001. Claimants were both not able to take their requisite number of 10-minutes rest breaks based on their shift duration; in these instances, Claimants regularly worked through their rest breaks. And for rest breaks actually taken, Claimants were not off duty because they were required to remain available to return to work early to respond to issues with jobs in progress and regularly did return to work early, and therefore remained on duty but also experienced rest breaks shorter than a net 10 minutes. That is, many times these interruptions actually did require Claimants to return to work early. Derek Sawyer Heating did not compensate

Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 4-2001. Furthermore, since Derek Sawyer Heating required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Derek Sawyer Heating was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Mondragon and Claimants regularly worked overtime hours. Derek Sawyer Heating has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Derek Sawyer Heating failed to provide Mr. Mondragon and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 4-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Derek Sawyer Heating, including Mr. Mondragon, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Mr. Mondragon, did not receive all wages owed upon separation based on Derek Sawyer Heating’s prior failings to pay all wages owed every pay period, including but not limited to minimum wage, overtime, and meal and rest premiums owed and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Derek Sawyer Heating pursuant to Labor Code section 226. First, Mr. Mondragon’s wage statements read “Derek Sawyer Heating Cooling” rather than providing the correct legal name of Defendant—Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC. Second, because Derek Sawyer Heating failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Derek Sawyer Heating for all necessary, **business-related expenses** they incurred in executing their duties for Derek Sawyer Heating. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions,

believed them to be unlawful.” Derek Sawyer Heating, however, has failed to fully reimburse Mr. Mondragon and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses associated with the use of their personal cell phones, which were required to remain in contact with supervisors and coworkers during their shifts, to clock in and out, and for GPS while driving to and from customers’ homes for deliveries. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Derek Sawyer Heating’s uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, failure to reimburse all necessary, business-related expenses, and failure to pay all wages owed upon separation all violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802 and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Mondragon, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Derek Sawyer Heating for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner

EXHIBIT 2

December 20, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Derek Sawyer Heating, Cooling, Plumbing
& Electrical, LLC
Attn: Legal Department
1001 Carver Rd.
Modesto, CA 95350

Derek Sawyer Smart Energy Heating & Air, Inc.
Attn: Legal Department
1001 Carver Rd.
Modesto, CA 95350

Derek Sawyer Heating, Cooling, Plumbing
& Electrical, LLC
Attn: Legal Department
201 E. Kennedy Blvd., Ste. 1600
Tampa, FL 33602

**FIRST AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC; and Derek Sawyer Smart Energy Heating & Air, Inc.

From: Jose Mondragon, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Jose Mondragon (“Mr. Mondragon”) to seek compensation and all other available relief, including civil penalties on his

behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Mondragon, “Claimants”) who have been injured by Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC and Derek Sawyer Smart Energy Heating & Air, Inc.’s (collectively, “Derek Sawyer Heating”) violations of the California Labor Code. This First Amended Notice serves to amend Mr. Mondragon’s original PAGA Notice dated October 8, 2024 and assigned case number 1055284-24. Mr. Mondragon, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Derek Sawyer Heating, 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.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Derek Sawyer Heating provides residential and commercial heating and cooling repair, installation, and cleaning services as well as solar panel installation in California, with locations in Modesto, Fresno and Stockton but also serving Chico, Yuba City, Gridley, Live Oak, Oroville, Olivehurst, Auburn, Lincoln, Rocklin, Roseville, Woodland, Davis, Sacramento, Placerville, Folsom, Rancho Cordova, Elk Grove, Galt, Lodi, Valley Springs, Stockton, French Camp, Lathrop, Manteca, Tracy, Discovery Bay, Brentwood, Livermore, Pleasanton, Escalon, Sonora, Oakdale, Morada, Woodbridge, Ripon, Salida, Modesto, Patterson, Waterford, Ceres, Turlock, Hughson, Riverbank, Keys, Merced, Fresno, Madera, Los Banos, Newman, Gustine, Walnut creek, Selma.

Claimant Mr. Mondragon worked for Derek Sawyer Heating at its Modesto location as an hourly, nonexempt employee in the position of Shop Manager, earning \$25.00 per hour from approximately May 2014 through approximately April 12, 2024. Mr. Mondragon, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in providing installation, repair, and removal of heating and cooling equipment and other heating- and cooling-related services to residential and commercial customers. As part of their employment with Derek Sawyer Heating, Mr. Mondragon and other hourly, nonexempt employees, collectively, “hourly nonexempt employees,” are or were assigned to and required to suffer and permitted to work—some without pay—while performing tasks collectively including, but not limited to, performing inventory checks; opening up the shop by disarming the alarm and unlocking the entry gate, warehouse, and office doors; dispatching Claimants to jobs; driving the company truck to the office and customer locations to deliver equipment for Claimants to perform services related to heating and cooling; installation, repair, and removal of equipment related to heating and air conditioning and installation of solar panels; and minor vehicle repairs to company trucks.

Claimant Mr. Mondragon regularly worked (5) days per week for 10 hours or more hours per day. During the entire course of his employment, Derek Sawyer Heating failed to provide Mr. Mondragon and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Derek Sawyer Heating has also failed to pay minimum wages to Mr. Mondragon and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 4-2001. As a consequence, Derek Sawyer Heating has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to, IWC Wage Order No. 4-2001. In violation of Labor

Code sections 510, 1194, 1197, and 1182.12, Derek Sawyer Heating has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Derek Sawyer Heating has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Derek Sawyer Heating has failed and continues to fail to provide timely, accurate wage statements to Mr. Mondragon and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Derek Sawyer Heating, including Mr. Mondragon, Derek Sawyer Heating has violated Labor Code section 203 by failing to pay all wages due upon separation. Derek Sawyer Heating has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for cell phone expenses, in violation of Labor Code section 2802. Mr. Mondragon is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Mondragon intends to bring an action against Derek Sawyer Heating under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Mondragon was employed by Derek Sawyer Heating from approximately May 2014 through approximately April 12, 2024 as a Shop Manager. For a period of at least four (4) years prior to October 2024, but for our purposes here, one (1) year prior, Derek Sawyer Heating has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Derek Sawyer Heating has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 4-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because (1) Claimants

¹ Without limitation, Mr. Mondragon, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

had to disarm and arm the alarm system and lock and unlock doors prior to clocking in or after clocking out; and (2) Claimants were interrupted during meal periods requiring them to resume work early (before 30 minutes had elapsed) by rushing equipment to jobs in progress; to monitor and respond to messages before and after their shifts or else while entirely off-shift. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Additionally, Defendant enforces practices that effectively require Claimants to perform work during their meal periods and rest breaks, the effects of which Defendant could have mitigated by increasing staff to at least provide coverage for other employees. However, Defendant instead chose to instruct Claimants to remain on call, and therefore on-duty, during their meal periods and rest breaks and to work through their rest breaks when staff were in demand. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Derek Sawyer Heating's part to provide compliant meal periods and rest breaks. With that, Derek Sawyer Heating's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Derek Sawyer Heating's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Derek Sawyer Heating's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 4-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Derek Sawyer Heating failed to authorize and permit timely, full-length meal periods for Mr. Mondragon and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 4-2001. Mr. Mondragon and Claimants regularly took their meal periods late—after the end of the fifth hour, because work remained that needed attention and could not wait like an unexpected need to deliver equipment for jobs in progress. Similarly, Mr. Mondragon and Claimants were required to perform work during their meal periods due to interruptions while on their meal periods, which caused their meal periods to be less than 30 minutes. Despite these meal period interruptions and meal periods taken late, Derek Sawyer Heating did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Claimants also worked 12 hours without a second meal period despite not signing valid second-meal period waivers. Nonetheless, Derek Sawyer Heating did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Derek Sawyer Heating required Mr. Mondragon and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 4-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Derek Sawyer Heating likewise failed to authorize and permit Mr. Mondragon and all other similarly aggrieved employees to take full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 4-2001. Claimants were both not able to take their requisite

number of 10-minutes rest breaks based on their shift duration; in these instances, Claimants regularly worked through their rest breaks. And for rest breaks actually taken, Claimants were not off duty because they were required to remain available to return to work early to respond to issues with jobs in progress and regularly did return to work early, and therefore remained on duty but also experienced rest breaks shorter than a net 10 minutes. That is, many times these interruptions actually did require Claimants to return to work early. Derek Sawyer Heating did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 4-2001. Furthermore, since Derek Sawyer Heating required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Derek Sawyer Heating was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Mondragon and Claimants regularly worked overtime hours. Derek Sawyer Heating has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Derek Sawyer Heating failed to provide Mr. Mondragon and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 4-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Derek Sawyer Heating, including Mr. Mondragon, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Mr. Mondragon, did not receive all wages owed upon separation based on Derek Sawyer Heating’s prior failings to pay all wages owed every pay period, including but not limited to minimum wage, overtime, and meal and rest premiums owed and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Derek Sawyer Heating pursuant to Labor Code section 226. First, Mr. Mondragon’s wage statements read “Derek Sawyer Heating Cooling” rather than providing the correct legal name of Defendant—Derek Sawyer Heating, Cooling, Plumbing & Electrical, LLC. Second, because Derek Sawyer Heating failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Derek Sawyer Heating for all necessary, **business-related expenses** they incurred in executing their duties for Derek Sawyer Heating. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Derek Sawyer Heating, however, has failed to fully reimburse Mr. Mondragon and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses associated with the use of their personal cell phones, which were required to remain in contact with supervisors and coworkers during their shifts, to clock in and out, and for GPS while driving to and from customers’ homes for deliveries. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Derek Sawyer Heating’s uniform failure to pay minimum and overtime wages, failure to authorize and permit full-length, off-duty meal periods and rest breaks or pay Claimants adequate premium compensation in lieu thereof, failure to keep accurate time records, failure to furnish timely and accurate wage statements, failure to reimburse all necessary, business-related expenses, and failure to pay all wages owed upon separation all violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802 and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Mondragon, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Derek Sawyer Heating for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in cursive script that reads "Cheryl Kenner".

Cheryl A. Kenner

1 **MONDRAGON V. DEREK SAWYER HEATING, COOLING, PLUMBING & ELEC.; et al.**
2 **STANISLAUS SUPERIOR COURT CASE NO.: CV-24-010302**

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 1700 West Burbank Boulevard, Burbank,
7 California 91506.

8 On February 26, 2025, I served the foregoing document, described as **FIRST AMENDED CLASS**
9 **ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT** on all interested parties in this
10 action by placing a true copy thereof in a sealed envelope, addressed as follows:

11 DEREK SAWYER HEATING, COOLING, 12 PLUMBING & ELECTRICAL, LLC, 201 E. Kennedy Blvd., Suite 1600 Tampa, Fl 33602	<i>Mailing address for DEREK SAWYER HEATING, COOLING, PLUMBING & ELECTRICAL, LLC</i>
DEREK SAWYER SMART ENERGYHEATING & AIR, INC. 1001 Carver Road Modesto, CA 95350	<i>Mailing address for DEREK SAWYER SMART ENERGY HEATING & AIR, INC.</i>

13 ☒ **(BY MAIL)** I placed such envelope, with postage thereon prepaid, in the United States mail at
14 Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and
15 processing correspondence for mailing. Under that practice, it would be deposited with the U.S.
16 Postal Service on that same day, with postage thereon fully prepaid, at Burbank, California, in the
ordinary course of business. I am aware that, on motion of the party served, Service is presumed
invalid if the postal cancellation or postage meter date is more than one day after the date of
deposit for mailing in this affidavit.

17 ☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the attorney at
18 the offices of the addressee.

19 ☐ **(BY FED EX)** I placed such envelope in a designated Federal Express pick-up box at Santa
Monica, California.

20 ☐ **(VIA CASE ANYWHERE)** I caused such documents described herein to be uploaded
21 electronically onto the website www.caseanywhere.com per a mutual agreement between the
22 parties. I uploaded the above-entitled document(s) with the understanding that all parties will
have access and be able to download said documents.

23 ☐ **(BY ELECTRONIC MAIL)** I sent such document via electronic mail to the email(s) noted
above.

24 ☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the
25 above is true and correct.

26 Executed on February 26, 2025, at Burbank, California.

27 
28 Cheryl A. Kenner