

Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Ryan Tish (SBN 274284)
Ryan.Tish@capstonelawyers.com
Alexander Wallin (SBN 320420)
Alexander.Wallin@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Francisco Robles

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

FRANCISCO ROBLES, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

ADT LLC, a Delaware limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: C24-02618

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this
24 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
25 and occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Francisco Robles is a resident of Stockton, in San Joaquin County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from

1 approximately February 2016 to February 2024. Plaintiff worked for Defendants as a
2 Residential/Small Business Installation Technician out of their Modesto and Concord,
3 California offices, and assigned to work at various customer jobsites in the Central Valley of
4 California. During his employment, Plaintiff typically worked eight (8) hours or more per day
5 and five (5) days per week. Plaintiff's primary job duties included, without limitation,
6 communicating with clients and installing alarm systems and cameras.

7 5. ADT LLC was and is, upon information and belief, a Delaware limited liability
8 company, and at all times hereinafter mentioned, an employer whose employees are engaged
9 throughout this county and the State of California.

10 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
11 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
12 amend the complaint and serve such fictitiously named Defendants once their names and
13 capacities become known.

14 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
15 were the partners, agents, owners, or managers of ADT LLC at all relevant times.

16 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to ADT LLC and/or
18 DOES 1 through 10 (collectively, "Defendants" or "ADT"), each acting as the agent,
19 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
20 Defendants and was acting within the course and scope of such agency, employment, joint
21 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
22 and all Defendants were in accordance with, and represent, the official policy of Defendants.

23 9. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately causing
26 the damages herein alleged.

27 10. Plaintiff is informed and believes, and thereon alleges, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

1 omissions, occurrences, and transactions alleged herein.

2 **GENERAL ALLEGATIONS**

3 11. Defendants are leading providers of security, interactive, and smart home
4 solutions serving residential and small business customers in the United States. Upon
5 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
6 department at their company headquarters in Boca Raton, Florida, which is responsible for the
7 recruiting and hiring of new employees, and communicating and implementing Defendants’
8 company-wide policies, including timekeeping policies and meal and rest period policies, to
9 employees throughout California.

10 12. In particular, Plaintiff and class members, on information and belief, received
11 the same standardized documents and/or written policies. Upon information and belief, the
12 usage of standardized documents and/or written policies, including new-hire documents,
13 indicate that Defendants dictated policies at the corporate level and implemented them
14 company-wide, regardless of their employees’ assigned locations or positions. Upon
15 information and belief, Defendants set forth uniform policies and procedures in several
16 documents provided at an employee’s time of hire.

17 13. Upon information and belief, Defendants maintain a centralized Payroll
18 department at their company headquarters in Boca Raton, Florida, which processes payroll for
19 all non-exempt, hourly paid employees working for Defendants at their various locations and
20 jobsites in California, including Plaintiff and class members. Based upon information and
21 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
22 employees in California, irrespective of their work locations. Upon information and belief,
23 Defendants process payroll for departing employees in the same manner throughout the State
24 of California, regardless of the manner in which each employee’s employment ends.

25 14. Defendants continue to employ non-exempt or hourly paid employees in
26 California.

27 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

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

5 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive certain wages for
7 overtime compensation and that they were not receiving certain wages for overtime
8 compensation.

9 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to be paid at a regular rate
11 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
12 premiums, that included as eligible income all remuneration required by law, including but not
13 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
14 forms of compensation, but failed to include all forms of remuneration in calculating the
15 regular rate of pay for Plaintiff and class members.

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

21 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to meal periods in
23 accordance with the California Labor Code and applicable IWC Wage Order or payment of
24 one (1) additional hour of pay at their regular rates of pay when they were not provided with
25 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
26 were not provided with all meal periods or payment of one (1) additional hour of pay at their
27 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
28 period.

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

9 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive complete and
11 accurate wage statements in accordance with California law. In violation of the California
12 Labor Code, Plaintiff and class members were not provided complete and accurate wage
13 statements.

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

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiff and class members did not receive payment of all wages due, including, but not
22 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
23 leave pay, within permissible time periods.

24 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of wages
26 during their employment. In violation of the California Labor Code, Plaintiff and class
27 members did not receive payment of all wages, including, but not limited to, overtime wages,
28 minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible

1 time periods.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that they were prohibited from issuing instruments for the payment of
4 wages that were not payable in cash, on demand, without discount, but did so, in violation of
5 the California Labor Code.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to the portion of wages
8 previously paid and subsequently unlawfully deducted by Defendants.

9 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to payment of wages as
11 designated by statute. In violation of the California Labor Code, Defendants secretly paid
12 Plaintiff and class members lower wages than required by statute while purporting to pay
13 them proper wages.

14 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive sick leave
16 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
17 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
18 violation of the California Labor Code, Defendants failed to include all forms of remuneration
19 in calculating the regular rate of pay for sick leave pay.

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

24 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
27 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
28 falsely represented to Plaintiff and class members that they were properly denied wages, all in

1 order to increase Defendants' profits.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

16 35. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
18 following requirements have been met:

- 19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged
23 violation.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

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

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 37. On November 12, 2024, Plaintiff provided written notice by online filing to the

1 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-1061245-24. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

11 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
12 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
13 violations of California Labor Code sections 201, 202, 204, 212, 213, 223, 224, 226(a), 226.7,
14 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

15 40. Labor Code section 558(a) provides "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid" Labor
22 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
23 to any other civil or criminal penalty provided by law."

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

27 42. As set forth below, Defendants have violated numerous provisions of both the
28 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage

Order.

43. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

CLASS ACTION ALLEGATIONS

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

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

46. Plaintiff's proposed class consists of and is defined as follows:

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

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

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

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

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

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

(a) Whether Defendants required Plaintiff and class members to work over

1 eight (8) hours per day, over twelve (12) hours per day, or over forty
2 (40) hours per week and failed to pay all legally required overtime
3 compensation to Plaintiff and class members;

4 (b) Whether Defendants failed to include all forms of remuneration in the
5 regular rate of pay as required by law for purposes of paying overtime
6 wages and/or meal and rest period premiums to Plaintiff and class
7 members

8 (c) Whether Defendants failed to pay Plaintiff and class members at least
9 minimum wages for all hours worked;

10 (d) Whether Defendants failed to provide Plaintiff and class members with
11 meal periods;

12 (e) Whether Defendants failed to authorize and permit Plaintiff and class
13 members to take rest periods;

14 (f) Whether Defendants provided Plaintiff and class members with
15 complete and accurate wage statements as required by California Labor
16 Code section 226(a);

17 (g) Whether Defendants maintained accurate payroll records as required by
18 California Labor Code section 1174(d);

19 (h) Whether Defendants failed to pay earned overtime wages, minimum
20 wages, meal and rest period premiums, and/or sick leave pay due to
21 Plaintiff and class members upon their discharge;

22 (i) Whether Defendants failed timely to pay overtime wages, minimum
23 wages, meal and rest period premiums, and/or sick leave pay due to
24 Plaintiff and class members during their employment;

25 (j) Whether Defendants issued instruments for the payment of wages that
26 were not payable in cash, on demand, without discount, in violation of
27 Labor Code sections 212 and 213;

28 (k) Whether Defendants unlawfully deducted a portion of wages previously

1 paid to Plaintiff and class members, in violation of California Labor
2 Code sections 221 and 224;

- 3 (l) Whether Defendants secretly paid Plaintiff and class members lower
4 wages than required by statute while purporting to pay the proper
5 wages, in violation of California Labor Code section 223;
- 6 (m) Whether Defendants failed to properly calculate the regular rate of pay
7 upon which Plaintiff's and class members' sick leave rate of pay was
8 based, as required by California Labor Code section 246;
- 9 (n) Whether Defendants failed to provide written notice of information
10 material to Plaintiff's and class members' employment with Defendants;
- 11 (o) Whether Defendants engaged in unlawful and unfair business practices
12 in violation of California Business & Professions Code sections 17200,
13 *et seq.*; and
- 14 (p) The appropriate amount of damages, restitution, or monetary penalties
15 resulting from Defendants' violations of California law.

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

- 18 (a) Numerosity: The class members are so numerous that joinder of all
19 members would be unfeasible and impractical. The membership of the
20 entire class is unknown to Plaintiff at this time; however, the class is
21 estimated to be greater than one hundred (100) individuals and the
22 identity of such membership is readily ascertainable by inspection of
23 Defendants' employment records.
- 24 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
25 protect the interests of each class member with whom he has a well-
26 defined community of interest, and Plaintiff's claims (or defenses, if
27 any) are typical of all class members as demonstrated herein.
- 28 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately

1 protect the interests of each class member with whom he has a well-
2 defined community of interest and typicality of claims, as demonstrated
3 herein. Plaintiff acknowledges that he has an obligation to make known
4 to the Court any relationship, conflicts or differences with any class
5 member. Plaintiff's attorneys, the proposed class counsel, are versed in
6 the rules governing class action discovery, certification, and settlement.
7 Plaintiff has incurred, and throughout the duration of this action, will
8 continue to incur costs and attorneys' fees that have been, are, and will
9 be necessarily expended for the prosecution of this action for the
10 substantial benefit of each class member.

11 (d) Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve
13 economies of time, effort, and expense as compared with separate
14 lawsuits, and will avoid inconsistent outcomes because the same issues
15 can be adjudicated in the same manner and at the same time for the
16 entire class.

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

26 //

27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

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

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

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

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

25 57. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

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

8 59. First, Defendants had, and continue to have, a company-wide policy and/or
9 practice requiring Plaintiff and class members to perform various work-related tasks while
10 off-the-clock. Specifically, Plaintiff and class members were instructed to clock in for their
11 shifts upon arriving at an assigned jobsite and clock out when completing an installation; after
12 completing an installation, Plaintiff and class members were instructed to record the time
13 spent traveling between jobsites under, “route,” which was a specific timekeeping code
14 available on Defendants’ timekeeping system. However, sometimes after Plaintiff clocked out
15 once he completed an installation, but before clocking in under the “route” timekeeping code
16 and travel to his next assigned jobsite, Plaintiff was sometimes required to remain with a
17 customer to answer questions or fulfill additional requests. Thus, Defendants failed to track
18 this time spent working in between jobsites, and Plaintiff and class members received no
19 compensation for this time.

20 60. Moreover, Defendants required Plaintiff and class members to travel to distant
21 jobsites and assignments, but did not compensate them for their time spent traveling to and
22 from these locations. For example, Plaintiff typically worked at client sites in the Central
23 Valley of California, but Defendants sometimes assigned him to jobsites outside of his usual
24 geographic area. As a result, Plaintiff was required to drive from his home in Stockton,
25 California, to client sites that were substantially farther away, such as Turlock, or Livermore,
26 which increased the amount of time he needed to prepare for the assignments and travel to and
27 from the distant jobsites. Because Plaintiff and class members were not allowed to clock in
28 until arriving at their first client site for the start of their scheduled shifts, and were required to

1 clock out when leaving their last client site at the end of their scheduled shifts, they were not
2 paid for any time spent preparing for their service appointments or traveling to and from
3 distant client sites. Thus, Plaintiff and class members were not compensated for this time,
4 despite being under the direction and control of Defendants.

5 61. Further, Defendants had, and continue to have, a company-wide policy and/or
6 practice of requiring Plaintiff and class members to complete mandatory training modules, but
7 did not permit them to complete them during their shifts. For example, Plaintiff was required
8 to complete several training modules each year, while on his days off or when he was at home.
9 Thus, Defendants failed to track all the time Plaintiff and class members spent completing the
10 mandatory training modules, and Plaintiff and class members received no compensation for
11 this time.

12 62. Second, during the relevant time period, Defendants had, and continue to have,
13 a company-wide policy and/or practice of scheduling and dispatching their installation
14 technicians to complete time-sensitive installation appointments, which included traveling to
15 various locations, and delivering and/or installing security alarm systems and cameras,
16 without building in sufficient time to allow for 30-minute meal periods. This scheduling
17 policy and/or practice prevented Plaintiff and class members from taking all uninterrupted 30-
18 minute meal periods, and forced them to work off-the-clock during their meal periods to
19 complete their assigned appointments. Because appointments could take longer than the time
20 Defendants allotted for them, Plaintiff and class members were unable to take compliant meal
21 periods. In conjunction with varying appointment durations, travel time between client sites
22 could take longer than anticipated due to traffic conditions, which further impeded Plaintiff
23 and class members from taking compliant meal periods. And, upon information and belief,
24 Defendants had no mechanism in place to permit Plaintiff and class members to take meal
25 periods when the schedule was thrown off because one or more of their appointments took
26 longer than the scheduled time, or if travel time between appointments was extended by traffic
27 conditions. For example, Plaintiff sometimes worked straight through his meal periods, in
28 order to keep up with Defendants' appointment scheduling practices. Defendants' company-

1 wide policy and/or practice of allotting too little time for employees to actually complete their
2 installation appointments, while still requiring that they be on time for their next appointment,
3 has prevented Plaintiff and class members from being relieved of their duties to take
4 uninterrupted 30-minute meal periods.

5 63. Defendants also had a company-wide practice and/or policy of failing to
6 schedule meal periods and/or failure to adhere to a schedule for meal periods, which further
7 caused Plaintiff and class members to not be relieved of their duties for compliant meal
8 periods. In addition, when Plaintiff and class members were able to take their meal periods,
9 Defendants pressured them to eat their meals while driving between client sites. Thus,
10 Plaintiff and class members worked through meal periods and/or had meal periods cut short or
11 interrupted in order to handle their workloads. Defendants did not compensate Plaintiff and
12 class members for the time they spent working off the clock during unpaid meal periods.

13 64. Third, Defendants required Plaintiff and class members to use their company
14 mobile devices, including cellular phones, to communicate with dispatcher employees,
15 coworkers, and supervisors at all times, including during unpaid meal periods. Defendants
16 expected that Plaintiff and class members promptly respond to calls, text messages, and emails
17 at all times to discuss work-related matters. For example, Defendants' management contacted
18 Plaintiff on his work cellular phone to discuss the status of completing installations or provide
19 him with his next assigned jobsite during his unpaid meal periods, but did not compensate him
20 for this time. Defendants knew or should have known that Plaintiff and class members were
21 being made to respond to management while off-the-clock in order to meet Defendants'
22 expectations, but failed to compensate them for this time worked.

23 65. Fourth, on information and belief, because Defendants frowned upon
24 employees accruing meal period premiums, Defendants' management pressured Plaintiff and
25 class members to clock out for meal periods to reflect compliant meal periods, even when they
26 did not receive a compliant meal period, in order to strictly limit meal period premiums that
27 Defendants would otherwise owe. Thus, Defendants did not record all hours worked during
28 meal periods, and Plaintiff and class members performed work during meal periods for which

1 they were not paid.

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

9 67. Moreover, Defendants did not pay Plaintiff and class members the correct
10 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
11 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
12 and/or other forms of remuneration. However, in violation of the California Labor Code,
13 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
14 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
15 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
16 class members worked overtime and received these other forms of pay, Defendants failed to
17 pay all overtime wages by paying a lower overtime rate than required.

18 68. For example, Defendants paid Plaintiff and class members incentive pay and/or
19 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage
20 statements as "BNF – Misc Bns." During pay periods that Plaintiff and class members were
21 paid overtime wages, Defendants did not incorporate the incentive pay and/or
22 nondiscretionary bonuses into Plaintiff's and class members' regular rate of pay and, as a
23 result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically,
24 Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5
25 times their regular rate of pay. Defendants' failure to properly calculate the overtime rates of
26 pay based on all remuneration paid has resulted in an underpayment of overtime wages to
27 Plaintiff and class members on a company-wide basis.

28 69. Defendants' failure to pay Plaintiff and class members the balance of overtime

1 compensation as required by California law, violates the provisions of California Labor Code
2 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
3 members are entitled to recover from Defendants their unpaid overtime compensation, as well
4 as interest, costs, and attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

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

11 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
12 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
13 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
14 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the
15 time during which an employee is subject to the control of an employer, and includes all the
16 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
17 Code Regs. tit. 8, § 11040(2)(L) (defining "Hours Worked").

18 72. First, as set forth above, Defendants had, and continue to have, company-wide
19 policies and/or practices of requiring Plaintiff and class members to perform various work-
20 related tasks while off-the-clock. For example, as stated, Plaintiff and class members were
21 required to perform work off-the-clock, including providing customer service to clients in
22 between jobsites and completing mandatory training modules while at home or on days off.
23 Moreover, due to Defendants' timekeeping policies, Plaintiff and class members were not
24 compensated properly for the time spent traveling to and from distant client sites. Thus,
25 Plaintiff and class members were not compensated for this time, despite being under the
26 direction and control of Defendants.

27 73. Second, as also stated above, due to Defendants' policies and/or practices of
28 assigning heavy workloads while allowing insufficient time to complete assigned

1 appointments, failing to schedule meal periods and/or adhere to a schedule for meal periods,
2 requiring employees to take their meal periods while driving to client sites, and requiring
3 employees to respond to calls at all times, Plaintiff and class members were impeded from
4 taking all uninterrupted meal periods to which they were entitled and were required to work
5 off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise
6 not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and
7 belief, in order to limit meal period premiums that Defendants would otherwise owe,
8 Defendants pressured Plaintiff and class members to clock out for meal periods to reflect
9 compliant meal periods. Thus, Defendants systematically failed to pay Plaintiff and class
10 members for actual hours worked during unpaid meal periods because these hours were not
11 always correctly recorded.

12 74. Defendants did not pay minimum wages for all hours worked by Plaintiff and
13 class members. To the extent that these off-the-clock hours did not qualify for overtime
14 premium payment, Defendants did not pay at least minimum wages for those hours worked
15 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
16 1198.

17 75. Defendants' failure to pay Plaintiff and class members minimum wages violates
18 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
19 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
20 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
21 interest thereon.

22 **THIRD CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 24 **Violations** 25 **(Against all Defendants)**

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

28 77. At all relevant times herein set forth, California Labor Code section 512(a)

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

7 78. At all relevant times herein set forth, California Labor Code sections 226.7,
8 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
9 meal period mandated by an applicable order of the IWC.

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

17 80. First, during the relevant time period, as stated, Defendants had, and continue
18 to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling
19 their installation technicians to meet specific appointment windows, in such a way that
20 prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to
21 which they were entitled. Further, as also stated, Defendants had company-wide practices
22 and/or policies of failing to schedule meal periods and/or adhere to a schedule for meal
23 periods, and pressuring employees to eat their meals while driving between jobsites, which
24 further caused Plaintiff and class members to not be relieved of their duties for compliant
25 meal periods. As a result, Plaintiff and class members had to work through all or part of their
26 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
27 before taking meal periods. For example, as stated, Plaintiff sometimes worked straight
28 through his meal periods, in order to keep up with Defendants' appointment scheduling

1 practices. As another example, Plaintiff sometimes took his meal periods late, after having
2 worked in excess of five (5) hours, and up to seven (7) hours, into his shift, in order to
3 complete his assigned installation appointments.

4 81. Second, as stated, Defendants had a policy and/or practice of requiring that
5 Plaintiff and class members respond to calls from dispatch employees, coworkers, and
6 supervisors on their mobile devices at all times, even during meal periods. For example,
7 Plaintiff's meal periods were interrupted by his supervisors calling to discuss the status of
8 completing installations or provide him with his next job assignment location.

9 82. Third, as stated, on information and belief, because Defendants frowned upon
10 employees accruing meal period premiums, Defendants' management pressured Plaintiff and
11 class members to clock out for meal periods, regardless of whether they had received a
12 compliant meal period or not. For example, Plaintiff was required to record that he had
13 received compliant meal periods on shifts when he had not, in fact, received these timely,
14 uninterrupted meal periods. Plaintiff and class members did not sign valid meal period
15 waivers on days that they were entitled to meal periods and were not relieved of all duties.

16 83. At all times herein mentioned, Defendants knew or should have known that, as
17 a result of these policies, Plaintiff and class members were prevented from being relieved of
18 all duties and required to perform some of their assigned duties during meal periods.
19 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
20 members meal period premiums when meal periods were missed, shortened, interrupted,
21 and/or late.

22 84. Moreover, Defendants engaged in a company-wide practice and/or policy of
23 not paying meal period premiums owed when compliant meal periods are not provided.
24 Because of this practice and/or policy, Plaintiff and class members have not received premium
25 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
26 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal
27 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
28 premiums because Defendants systematically failed to include all forms of compensation,

1 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
2 regular rate of pay. For example, Defendants paid Plaintiff and class members incentive pay
3 and/or nondiscretionary bonuses which were listed on Plaintiff's and class members' wage
4 statements as "CE5 Tech Prod" and/or "CM5 TechUpsel." During pay periods that Plaintiff
5 and class members were paid premium pay for missed, late, and interrupted meal periods,
6 Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into
7 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and
8 lower rates of pay for meal period premiums. Specifically, Defendants paid Plaintiff and class
9 members meal period premiums at their straight hourly rate of pay instead of at their regular
10 rate of pay. As a result, Defendants failed to provide Plaintiff and class members compliant
11 meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
12 to pay the full meal period premiums due.

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

17 **FOURTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 19 **(Against all Defendants)**

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

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

25 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

1 hours or major fraction thereof” unless the total daily work time is less than three and one-half
2 (3 ½) hours.

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

11 90. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
13 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
14 scheduling policies and practices, while simultaneously assigning heavy workloads, prevented
15 Plaintiff and class members from being able to take rest periods. Defendants also failed to
16 schedule rest periods, which, coupled with Defendants’ requirement that employees respond
17 to communications from management on their company-issued mobile devices at all times,
18 further led to Plaintiff and class members not being authorized and permitted to take rest
19 periods.

20 91. Furthermore, upon information and belief, during the relevant time period,
21 Defendants maintained a company-wide on-premises rest period policy, which effectively
22 required that Plaintiff and/or class members remain on the work premises during their rest
23 periods. Because Plaintiff and/or class members were restricted from leaving the premises
24 during rest periods, they were denied the ability to use their rest periods freely for their own
25 purposes, such as running personal errands. Thus, Defendants effectively maintained control
26 over Plaintiff and/or class members during rest periods.

27 92. As a result of Defendants’ practices and policies, Plaintiff and class members
28 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without

1 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
2 to forgo rest periods due to the heavy workload and Defendants' failure to schedule rest
3 periods for employees.

4 93. Defendants have also engaged in a company-wide practice and/or policy of not
5 paying rest period premiums owed when compliant rest periods are not authorized and
6 permitted. Because of this practice and/or policy, Plaintiff and class members have not
7 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
8 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
9 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
10 premium wages because Defendants failed to include all forms of compensation, such as
11 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular
12 rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed
13 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
14 the applicable IWC Wage Order.

15 94. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

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

26 96. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 97. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
7 applicable hourly rates in effect during the pay period, including rates of pay for overtime
8 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
9 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
10 226(a)(2), 226(a)(5), and 226(a)(9).

11 98. Because Defendants did not record the time Plaintiff and Subclass members
12 spent working off the clock and deducted time from their records for meal periods that were
13 interrupted and/or missed (and therefore time for which they should have been paid),
14 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
15 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
16 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
17 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
18 rates of pay in effect during the pay period and the corresponding accurate number of hours
19 worked at each hourly rate, in violation of section 226(a)(9).

20 99. Moreover, because Defendants did not calculate Plaintiff's and Subclass
21 members' regular rate of pay correctly for purposes of paying overtime wages, meal and rest
22 period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross
23 wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
24 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
25 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
26 of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation
27 of section 226(a)(9).

28 100. The wage statement deficiencies also include, among other things, failing to list

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

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

18 102. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
20 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
21 employment of any employees for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
23 Wage Order, employers are required to keep accurate time records showing when the
24 employee begins and ends each work period and meal period. During the relevant time
25 period, Defendants engaged in company-wide practices and/or policies of failing to record
26 actual hours worked, and thereby failed to keep accurate records of work period and meal
27 period start and end times for Plaintiff and Subclass members, in violation of section 1198.

28 103. Plaintiff and Subclass members are entitled to recover from Defendants the

greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

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

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

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

106. During the relevant time period, on information and belief, Defendants had a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiff on February 9, 2024. However, Defendants did not provide him with his final pay until February 15, 2024. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of Labor Code section 201.

107. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

108. Defendants' failure to pay Plaintiff and class members who are no longer

1 employed by Defendants their wages earned and unpaid at the time of discharge, or within
2 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
3 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
4 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
5 thirty (30) day maximum pursuant to California Labor Code section 203.

6 **SEVENTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 8 **Employment** 9 **(Against all Defendants)**

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

12 110. This cause of action is dependent upon, and wholly derivative of, the overtime
13 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
14 timely paid to Plaintiff and class members during their employment.

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

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

25 113. At all times relevant herein, Labor Code section 204 provides that all wages
26 earned for labor in excess of the normal work period shall be paid no later than the payday for
27 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
28 204 provides that the requirements of this section are deemed satisfied by the payment of

wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

EIGHTH CAUSE OF ACTION

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

(Against all Defendants)

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

117. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 223, 224, 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226(a), 226.7, 246, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms

- 1 of remuneration in the regular rate of pay as required by law for
2 purposes of paying overtime wages and/or meal and rest period
3 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 4 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
5 1198, and the applicable IWC Wage Order for Defendants' failure to
6 compensate Plaintiff and other aggrieved employees with at least
7 minimum wages for all hours worked, as alleged herein;
- 8 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other aggrieved employees with meal periods, as alleged herein;
- 11 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to authorize and
13 permit Plaintiff and other aggrieved employees to take rest periods, as
14 alleged herein;
- 15 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
16 IWC Wage Order for failure to provide accurate and complete wage
17 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 18 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as alleged
20 herein;
- 21 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
22 earned wages upon termination, as alleged herein;
- 23 (i) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (j) Violation of Labor Code sections 212 and 213 for issuing instruments
26 for the payment of wages that were not payable in cash on demand,
27 without discount, as set forth below;
- 28 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting

a portion of wages previously paid to other aggrieved employees, as set forth below;

- (l) Violation of Labor Code section 223 for secretly paying Plaintiff and/or other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to other aggrieved employees, as set forth below; and
- (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendants, as set forth below.

119. At all relevant times herein set forth, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing" (internal citations omitted).

120. In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

. . . (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

121. Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (sic) from promptly receiving their due wages in *full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as agents of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

122. During the relevant time period, Defendants had an agreement with a payroll service provider, Wisely, for the issuance of payroll debit cards to employees, including Plaintiff and other aggrieved employees, to discharge their wage payment obligations to their employees. Under Defendants’ payroll debit card program, Plaintiff and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee, which resulted in a discount in their pay. For example, Plaintiff was subjected to transaction

1 fees, including a \$3 transaction fee, when withdrawing his wages from an ATM. Thus,
2 Defendants' payroll debit card program was and continues to be unlawful as it did not give
3 Plaintiff and other aggrieved employees members access to their entire wages without
4 discount and without delay.

5 123. California courts recognize a policy favoring the full and prompt payment of
6 wages to employees. Defendants' payroll card program is inconsistent with this policy
7 because Defendants' program denies Plaintiff and other aggrieved employees of easy access to
8 their wages. Thus, Defendants' company-wide payroll debit card program violates California
9 Labor Code sections 212 and 213. Plaintiff and other aggrieved employees are therefore
10 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
11 and (k).

12 124. At all times relevant herein, California Labor Code section 221 provides that it
13 shall be unlawful for any employer to collect or receive from an employee any part of wages
14 theretofore paid by said employer to said employee. California Labor Code section 224 also
15 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
16 deduction is expressly authorized in writing by the employee."

17 125. During the relevant time period, Defendants unlawfully deducted a portion of
18 wages previously paid to Plaintiff and other aggrieved employees in violation of California
19 Labor Code section 221. On information and belief, Defendants systematically, and on a
20 company-wide basis, provided Plaintiff and other aggrieved employees with payroll debit
21 cards as payment of their wages. Under Defendants' payroll debit card program, Plaintiff and
22 other aggrieved employees were assessed various fees in connection with their use of the
23 payroll debit cards. For example, as described above, Plaintiff and other aggrieved employees
24 were required to pay ATM withdrawal fees and/or other fees to obtain and/or spend their
25 earned and due wages. The fees charged to Plaintiff and other aggrieved employees resulted
26 in a discount of their wages.

27 126. Defendants' practice, which resulted in a discount of wages to employees, is
28 tantamount to taking deductions from Plaintiff's and other aggrieved employees' paychecks

1 without their written authorization and therefore constitutes an unlawful deduction of wages,
2 in violation of California Labor Code sections 221 and 224. Plaintiff and other aggrieved
3 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 225.5 and/or 2699(a), (f), and (k).

5 127. At all times, California Labor Code section 223 makes it unlawful for an
6 employer to secretly pay wages lower than required by statute while purporting to pay legal
7 wages.

8 128. During the relevant time period, Defendants willfully and systematically issued
9 payroll debit cards to Plaintiff and other aggrieved employees that discounted their wages by
10 charging various fees in connection with the use of the payroll debit cards. Defendants'
11 payroll debit card program resulted in the payment of less than statutorily required wages to
12 Plaintiff and other aggrieved employees. Thus, Defendants paid Plaintiff and other aggrieved
13 employees lower wages than those they were entitled to while purporting that Plaintiff and
14 other aggrieved employees were properly paid. Defendants' failure to pay Plaintiff and other
15 aggrieved employees the correct designated wage, while purporting to pay legal wages, is a
16 violation of California Labor Code section 223. Plaintiff and other aggrieved employees are
17 therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or
18 2699(a), (f), and (k).

19 129. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
20 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
21 days from the commencement of employment with paid sick days, to be accrued at least one
22 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
23 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
24 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
25 the workweek in which the employee uses paid sick time, whether or not the employee
26 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
27 employees shall be calculated by dividing the employee's total wages, not including overtime
28 premium pay, by the employee's total hours worked in the full pay periods of the prior 90

1 days of employment.

2 130. During the relevant time period, Defendants did not pay Plaintiff and other
3 aggrieved employees the correct sick leave rates of pay. Defendants failed to correctly use
4 either method of calculation under Labor Code section 246(l) to determine Plaintiff's and
5 other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage,
6 Defendants paid Plaintiff and other aggrieved employees incentive pay, nondiscretionary
7 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
8 Code, Defendants failed to incorporate all remunerations, including incentive pay, and/or
9 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
10 calculating the sick leave pay rate. Therefore, during times when Plaintiff and other aggrieved
11 employees sick leave and received these other forms of pay, Defendants failed to pay all sick
12 leave benefits by paying a lower sick leave pay rate than required. Specifically, Defendants
13 paid Plaintiff and other aggrieved employees sick leave based on their hourly rate of pay
14 instead of their regular rate of pay.

15 131. Defendants' failure to properly calculate the sick leave rates of pay based on all
16 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
17 aggrieved employees on a company-wide basis in violation of California Labor Code section
18 246(l). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
19 pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

20 132. At all relevant times herein, California's Wage Theft Prevention Act was
21 enacted to ensure that employers provide employees with basic information material to their
22 employment relationship at the time of hiring, and to ensure that employees are given written
23 and timely notice of any changes to basic information material to their employment. Codified
24 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
25 time of hiring, an employer must provide written notice to employees containing basic and
26 material payroll information, including, among other things, the rate(s) of pay and basis
27 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
28 including any rates for overtime, the regular payday designated by the employer, and any

allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

133. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is blank where the aforementioned wage information should be filled in. Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

134. Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

NINTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

136. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

137. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business

practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, in violation of California Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing to provide Plaintiff and class members with accurate wage

1 statements and failing to maintain accurate payroll records in violation
2 of California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (g) Failing timely to pay all earned wages to Plaintiff and class members in
5 violation of California Labor Code section 204, as alleged herein;

6 (h) Issuing instruments to Plaintiff and class members for the payment of
7 wages that were not payable in cash, on demand, without discount, in
8 violation of California Labor Code sections 212 and 213, as set forth
9 below;

10 (i) Collecting or receiving wages already paid from Plaintiff and class
11 members in violation of California Labor Code sections 221 and 224, as
12 set forth below;

13 (j) Failing to pay the statutorily designated wage scale in violation of
14 California Labor Code section 223, as set forth below;

15 (k) Failing to properly calculate the sick leave paid to Plaintiff and class
16 members in violation of California Labor Code section 246(l), as set
17 forth below; and

18 (l) Failing to provide written notice of information material to Plaintiff's
19 and class members' employment with Defendants in violation of
20 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

21 140. At all times relevant herein, California Labor Code section 212 prohibits
22 employers from issuing any instruments for the payment of wages unless such instruments are
23 negotiable and payable in cash, on demand, and without discount. California Labor Code
24 section 213 permits employers to pay employees via direct deposit so long as the employee
25 authorizes payment via direct deposit.

26 141. Under California law, employers are permitted to fulfill their wage payment
27 obligations to employees by using payroll debit cards, but only so long as the employee is
28 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v.*

1 *Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249,
2 *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards
3 Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied
4 heavily on:

5 . . . [T]he fact that the pay programs were optional, thereby
6 allowing an employee to either participate in the program or
7 receive his or her pay in some other way, such as direct deposit.
8 Specifically, the DLSE opined that “[t]he success of the described
9 procedure, in practice, will of course require that . . . it is
10 presented as an *alternative* method for wage payment for which
11 [the employees’] participation is optional.” The DLSE also stated,
“[i]t is significant that the program does not mandate employee
participation in the Money Network Service and that it is designed
to provide an alternative for employees receiving their wage
payment. Employees are also given the option of having their pay
direct deposited into an account of their choosing” (internal
citations omitted).

12 142. In addition, California law only permits employers to utilize payroll debit card
13 programs if they provide employees with effective access to their wages without discount.
14 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
15 payroll debit cards where the following requirements are satisfied:

16 . . . (1) [T]he “wages [are] payable at some established place of
17 business in the state and there be at least 30 days of sufficient
18 funds for payment,”; (2) the employees are “fully informed of the
19 service and procedures and that it is represented as an alternative
20 method for wage payment for which their participation is
optional,”; (3) the employees receive “an itemized wage
statement,”; and (4) “at least one transaction per pay period [is]
without fee.”

21 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

22 143. Further, the DLSE notes that the Labor Code manifests:

23 . . . (1) [T]he “wages [are] payable at some established place of
24 business in the state and there be at least 30 days of sufficient
25 funds for payment,”; (2) the employees are “fully informed of the
26 service and procedures and that it is represented as an alternative
method for wage payment for which their participation is
optional,”; (3) the employees receive “an itemized wage
statement,”; and (4) “at least one transaction per pay period [is]
without fee.”

27 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
28 providers “effectively act as *agents* of the client employers in discharging the employer’s

1 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
2 Labor Code does not purport to regulate the specific arrangements between employers and
3 payroll service providers, both an employer and, under the express language in Labor Code
4 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

5 144. During the relevant time period, Defendants had an agreement with a payroll
6 service provider, Wisely, for the issuance of payroll debit cards to employees, including
7 Plaintiff and class members, to discharge their wage payment obligations to their employees.
8 Under Defendants’ payroll debit card program, Plaintiff and class members did not have easy
9 access to the entirety of their wages without incurring a fee. Plaintiff and class members were
10 unable to withdraw their entire wages in at least one transaction without incurring a fee, which
11 resulted in a discount in their pay. For example, Plaintiff was subjected to transaction fees,
12 including a \$3 transaction fee, when withdrawing his wages from an ATM. Thus,
13 Defendants’ payroll debit card program was and continues to be unlawful as it did not give
14 Plaintiff and class members access to their entire wages without discount and without delay.

15 145. California courts recognize a policy favoring the full and prompt payment of
16 wages to employees. Defendants’ payroll card program is inconsistent with this policy
17 because Defendants’ program denies Plaintiff and class members of easy access to their
18 wages. Thus, Defendants’ company-wide payroll debit card program violates California
19 Labor Code sections 212 and 213.

20 146. At all times relevant herein, California Labor Code section 221 provides that it
21 shall be unlawful for any employer to collect or receive from an employee any part of wages
22 theretofore paid by said employer to said employee. California Labor Code section 224 also
23 provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a
24 deduction is expressly authorized in writing by the employee.”

25 147. During the relevant time period, Defendants unlawfully deducted a portion of
26 wages previously paid to Plaintiff and class members in violation of California Labor Code
27 section 221. On information and belief, Defendants systematically, and on a company-wide
28 basis, provided Plaintiff and class members with payroll debit cards as payment of their

1 wages. Under Defendants' payroll debit card program, Plaintiff and class members were
2 assessed various fees in connection with their use of the payroll debit cards. For example, as
3 described above, Plaintiff and class members were required to pay ATM withdrawal fees
4 and/or other fees to obtain and/or spend their earned and due wages. The fees charged to
5 Plaintiff and class members resulted in a discount of their wages.

6 148. Defendants' practice, which resulted in a discount of wages to employees, is
7 tantamount to taking deductions from Plaintiff's and class members' paychecks without their
8 written authorization and therefore constitutes an unlawful deduction of wages, in violation of
9 California Labor Code sections 221 and 224.

10 149. At all times, California Labor Code section 223 makes it unlawful for an
11 employer to secretly pay wages lower than required by statute while purporting to pay legal
12 wages.

13 150. During the relevant time period, Defendants willfully and systematically issued
14 payroll debit cards to Plaintiff and class members that discounted their wages by charging
15 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
16 card program resulted in the payment of less than statutorily required wages to Plaintiff and
17 class members. Thus, Defendants paid Plaintiff and class members lower wages than those
18 they were entitled to while purporting that Plaintiff and class members were properly paid.
19 Defendants' failure to pay Plaintiff and class members the correct designated wage, while
20 purporting to pay legal wages, is a violation of California Labor Code section 223.

21 151. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
22 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
23 days from the commencement of employment with paid sick days, to be accrued at least one
24 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
25 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
26 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
27 the workweek in which the employee uses paid sick time, whether or not the employee
28 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt

1 employees shall be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
3 days of employment.

4 152. During the relevant time period, Defendants did not pay Plaintiff and class
5 members the correct sick leave rates of pay. Defendants failed to correctly use either method
6 of calculation under Labor Code section 246(l) to determine Plaintiff's and class members'
7 sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and
8 class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
9 However, in violation of the California Labor Code, Defendants failed to incorporate all
10 remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation
11 of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during
12 times when Plaintiff and class members took sick leave and received these other forms of pay,
13 Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate than
14 required. Specifically, Defendants paid Plaintiff and class members sick leave based on their
15 hourly rate of pay instead of their regular rate of pay.

16 153. Defendants' failure to properly calculate the sick leave rates of pay based on all
17 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
18 members on a company-wide basis in violation of California Labor Code section 246(l).

19 154. At all relevant times herein, California's Wage Theft Prevention Act was
20 enacted to ensure that employers provide employees with basic information material to their
21 employment relationship at the time of hiring, and to ensure that employees are given written
22 and timely notice of any changes to basic information material to their employment. Codified
23 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
24 time of hiring, an employer must provide written notice to employees containing basic and
25 material payroll information, including, among other things, the rate(s) of pay and basis
26 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
27 including any rates for overtime, the regular payday designated by the employer, and any
28 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor

Code § 2810.5(a)(1)(A)-(C).

155. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and class members with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is blank where the aforementioned wage information should be filled in. Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

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

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

TENTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

159. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

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

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

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

22 163. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
23 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
24 benefits implemented by section 226.7 withheld and retained by Defendants during a period
25 that commences four years prior to the filing of the initial complaint; a permanent injunction
26 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
27 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
28 Procedure section 1021.5 and other applicable laws; and an award of costs.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

Class Certification

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

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

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

As to the First Cause of Action

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

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

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

10 **As to the Third Cause of Action**

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

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

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

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

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

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

26 **As to the Fourth Cause of Action**

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

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

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

14 **As to the Fifth Cause of Action**

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

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

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

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

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 meal and rest period premiums, and/or sick leave pay owed at the time of termination of the
3 employment of Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

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

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

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

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

15 42. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
17 overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay
18 during their employment;

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

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

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 246 (by failing to properly calculate sick leave pay); and 2810.5 (by failing to provide notice of material terms of employment);

49. For civil penalties pursuant to the California Labor Code, including sections 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

50. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

51. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

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

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

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

4 54. That the Court declare, adjudge and decree that Defendants' conduct of failing
5 to provide Plaintiff and class members all overtime wages due to them; failing to include all
6 forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or
7 meal and rest period premiums to Plaintiff and class members; failing to provide Plaintiff and
8 class members all minimum wages due to them; failing to provide Plaintiff and class members
9 all meal periods; failing to authorize and permit Plaintiff and class members to take all rest
10 periods; failing to provide Plaintiff and class members accurate and complete wage
11 statements; failing to maintain accurate payroll records for Plaintiff and class members; failing
12 to provide access to wages upon demand, without discount; unlawfully deducting a portion of
13 wages previously paid; secretly paying a lower wage; failing to properly calculate Plaintiff's
14 and class members' sick leave rates of pay; failing to reimburse Plaintiff and class members
15 for business-related expenses; and failing to provide written notice of material terms of
16 employment, constitutes an unlawful business practice in violation of California Business and
17 Professions Code sections 17200, *et seq.*;

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

20 56. For the appointment of a receiver to receive, manage, and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violations of California Business & Professions Code sections
23 17200, *et seq.*;

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

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

28 //

1 **As to the Tenth Cause of Action**

2 59. That the Court declare, adjudge and decree that Defendants' conduct of denying
3 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
4 an unfair business practice in violation of California Business and Professions Code sections
5 17200, *et seq.*;

6 60. For restitution of the statutory benefits under section 226.7 unfairly withheld
7 from Plaintiff and class members and prejudgment interest from the day such amounts were
8 due and payable;

9 61. For the appointment of a receiver to receive, manage, and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

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

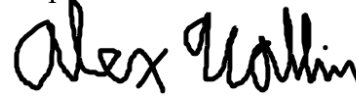
15 63. For pre-judgment and post-judgment interest as provided by law; and

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

18
19 Dated: January 30, 2025

Respectfully submitted,

Capstone Law APC

21 By: 

22 Roxanna Tabatabaeepour

23 Ryan Tish

Alexander Wallin

24 Attorneys for Plaintiff Francisco Robles

EXHIBIT “1”

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

November 12, 2024

VIA ONLINE SUBMISSION

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

Subject: *Francisco Robles v. ADT LLC*

Dear PAGA Administrator:

This office represents Francisco Robles in connection with his claims under the California Labor Code. Mr. Robles was an employee of ADT LLC ("ADT").

The employer may be contacted directly at the address below:

ADT LLC
1501 YAMATO ROAD
BOCA RATON, FL 33431

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

ADT employed Mr. Robles as an hourly paid, non-exempt employee from approximately February 2016 to February 2024. Mr. Robles worked for ADT as a Residential/Small Business Installation Technician out of its Modesto and Concord, California offices, and assigned to work at various customer jobsites in the Central Valley of California. During his employment, Mr. Robles typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Robles was compensated approximately \$28.80 per hour. His job duties included, without limitation, communicating with clients and installing alarm systems and cameras.

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

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

ADT LLC is a Delaware limited liability company and is a leading provider of security, interactive, and smart home solutions serving residential and small business customers in the United States. Upon information and belief, ADT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Boca Raton, Florida, for all non-exempt, hourly paid employees working for ADT in California, including Mr. Robles and other aggrieved employees. At all relevant times, ADT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Robles and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

First, during the relevant time period, ADT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Robles and other aggrieved employees to perform various work-related tasks while off-the-clock. Specifically, Mr. Robles and other aggrieved employees were instructed to clock in for their shifts upon arriving at an assigned jobsite and clock out when completing an installation; after completing an installation, Mr. Robles and other aggrieved employees were instructed to record the time spent traveling between jobsites under, “route,” which was a specific timekeeping code available on ADT’s timekeeping system. However, sometimes after Mr. Robles clocked out once he completed an installation, but before clocking in under the “route” timekeeping code to travel to his next assigned jobsite, Mr. Robles was often required to remain with a customer to answer questions or fulfill additional requests. This typically resulted in Mr. Robles staying at the jobsite an additional 15-30 minutes, time which was not recorded. Thus, ADT failed to track this time spent working in between jobsites, and Mr. Robles and other aggrieved employees received no compensation for this time.

Moreover, ADT required Mr. Robles and other aggrieved employees to travel to distant jobsites and assignments, but did not compensate them for their time spent traveling to and from these locations. For example, Mr. Robles typically worked at client sites in the Central Valley of California, but ADT sometimes assigned him to jobsites outside of his usual geographic area. As a result, Mr. Robles was required to drive from his home in Stockton, California, to client sites that were substantially farther away, such as Turlock, or Livermore, which increased the amount of time he needed to prepare for the assignments and travel to and from the distant jobsites. Because Mr. Robles and other aggrieved employees were not allowed to clock in until arriving at their first client site for the start of their scheduled shifts, and were required to clock out when leaving their last client site at the end of their scheduled shifts, they were not paid for any time spent preparing for their service appointments or traveling to and from distant client sites. Thus, Mr. Robles and other aggrieved employees were not compensated for this time, despite being under the direction and control of ADT.

Further, ADT had, and continues to have, a company-wide policy and/or practice of requiring Mr. Robles and other aggrieved employees to complete mandatory training modules, but did not permit them to complete them during their shifts. For example, Mr. Robles was required to complete 2-3 training modules per year, while on his days off or when he was at home, which took about 30 minutes and up to one (1) hour to complete per instance. Thus, ADT failed to track all the time Mr. Robles and other aggrieved employees spent completing the mandatory training modules, and Mr. Robles and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, ADT had, and continues to have, a company-wide policy and/or practice of scheduling and dispatching its installation technicians to complete time-sensitive installation appointments, which included traveling to various locations, and delivering and/or installing security alarm systems and cameras, without building in sufficient time to allow for 30-minute meal periods. This scheduling policy and/or practice prevented Mr. Robles and other aggrieved employees from taking all uninterrupted 30-minute meal periods, and forced them to work off-the-clock during their meal periods to complete their assigned appointments. Because appointments could take longer than the time ADT allotted for them, Mr. Robles and other aggrieved employees were unable to take compliant meal periods. In conjunction with varying appointment durations, travel time between client sites could take longer than anticipated due to traffic conditions, which further impeded Mr. Robles and other aggrieved employees from taking compliant meal periods. And, upon information and belief, ADT had no mechanism in place to permit Mr. Robles and other aggrieved employees to take meal periods when the schedule was thrown off because one or more of their appointments took longer than the scheduled time, or if travel time between

appointments was extended by traffic conditions. For example, approximately 3-4 times per week, Mr. Robles worked straight through his meal periods, in order to keep up with ADT's appointment scheduling practices. ADT's company-wide policy and/or practice of allotting too little time for employees to actually complete their installation appointments, while still requiring that they be on time for their next appointment, has prevented Mr. Robles and other aggrieved employees from being relieved of their duties to take uninterrupted 30-minute meal periods.

ADT also had a company-wide practice and/or policy of failing to schedule meal periods and/or failure to adhere to a schedule for meal periods, which further caused Mr. Robles and other aggrieved employees to not be relieved of their duties for compliant meal periods. In addition, when Mr. Robles and other aggrieved employees were able to take their meal periods, ADT pressured them to eat their meals while driving between client sites. Thus, Mr. Robles and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. ADT did not compensate Mr. Robles and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Third, ADT required Mr. Robles and other aggrieved employees to use their company mobile devices, including cellular phones, to communicate with dispatcher employees, coworkers, and supervisors at all times, including during unpaid meal periods. ADT expected that Mr. Robles and other aggrieved employees promptly respond to calls, text messages, and emails at all times to discuss work-related matters. For example, ADT's management contacted Mr. Robles on his work cellular phone to discuss the status of completing installations or provide him with his next assigned jobsite during his unpaid meal periods, but did not compensate him for this time. ADT knew or should have known that Mr. Robles and other aggrieved employees were being made to respond to management while off-the-clock in order to meet ADT's expectations, but failed to compensate them for this time worked.

Fourth, on information and belief, because ADT frowned upon employees accruing meal period premiums, ADT's management pressured Mr. Robles and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, ADT did not record all hours worked during meal periods, and Mr. Robles and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

overtime and received these other forms of pay, ADT failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as set forth above, ADT had, and continues to have, company-wide policies and/or practices of requiring Mr. Robles and other aggrieved employees to perform various work-related tasks while off-the-clock. For example, as stated, Mr. Robles and other aggrieved employees were required to perform work off-the-clock, including providing customer service to clients in between jobsites and completing mandatory training modules while at home or on days off. Moreover, due to ADT's timekeeping policies, Mr. Robles and other aggrieved employees were not compensated properly for the time spent traveling to and from distant client sites. Thus, Mr. Robles and other aggrieved employees were not compensated for this time, despite being under the direction and control of ADT.

Second, as also stated above, due to ADT's policies and/or practices of assigning heavy workloads while allowing insufficient time to complete assigned appointments, failing to schedule meal periods and/or adhere to a schedule for meal periods, requiring employees to take their meal periods while driving to client sites, and requiring employees to respond to calls at all times, Mr. Robles and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and belief, in order to limit meal period premiums that ADT would otherwise owe, ADT pressured Mr. Robles and other aggrieved employees to clock out for meal

periods to reflect compliant meal periods. Thus, ADT systematically failed to pay Mr. Robles and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, ADT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and scheduling its installation technicians to meet specific appointment windows, in such a way that prevented Mr. Robles and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as also stated, ADT had company-wide practices and/or policies of failing to schedule meal periods and/or adhere to a schedule for meal periods, and pressuring employees to eat their meals while driving between jobsites, which further caused Mr. Robles and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Robles and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, approximately 3-4 times per week, Mr. Robles worked straight through his meal periods in order to keep up with ADT's appointment scheduling practices. As another example, as stated, Mr. Robles was sometimes required to return early from his meal periods

to keep up with ADT's pressure to meet time-sensitive repairs. Indeed, according to Mr. Robles's time records, on September 4, 2023, he clocked in at the start of his meal period at 1:48 p.m. and clocked out for the end of his meal period at 2:14 p.m., resulting in Mr. Robles taking a shortened meal period of 26 minutes. Additionally, Mr. Robles sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage. For example, according to Mr. Robles's time records, on September 29, 2023, he clocked in at the start of his shift at 8:32 a.m. and clocked out for his meal period at 3:08 p.m., working a total of six (6) hours and 36 minutes (or 6.60 hours), before he was able to take his meal period.

Second, as stated above, ADT had a policy and/or practice of requiring that Mr. Robles and other aggrieved employees respond to calls from dispatch employees, coworkers, and supervisors on their mobile devices at all times, even during meal periods. For example, Mr. Robles's meal periods were interrupted by his supervisors calling to discuss the status of completing installations or provide him with his next job assignment location.

Third, as stated, on information and belief, because ADT frowned upon employees accruing meal period premiums, ADT's management pressured Mr. Robles and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period or not. For example, Mr. Robles was required to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods. Mr. Robles and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned, ADT knew or should have known that as a result of its company-wide policies and/or practices, Mr. Robles and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ADT further knew or should have known that it did not pay Mr. Robles and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, ADT engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Robles and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that ADT did pay Mr. Robles and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ADT did not pay Mr. Robles and other aggrieved employees at the correct rate of pay for premiums because ADT systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. For example, ADT paid Mr. Robles and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Robles's and other aggrieved employees' wage statements as "CE5 Tech Prod" and/or "CM5 TechUpsel." During pay periods that Mr. Robles and other aggrieved employees were paid premium pay for missed, late, and interrupted meal periods, ADT did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Robles's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay meal premiums. Specifically, ADT paid Mr. Robles and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, ADT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Robles and other aggrieved employees are entitled to recover civil

penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

During the relevant time period, ADT regularly failed to authorize and permit Mr. Robles and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ADT's company-wide scheduling policies and practices, while simultaneously assigning heavy workloads, prevented Mr. Robles and other aggrieved employees from being able to take rest periods. ADT also failed to schedule rest periods, which, coupled with ADT's requirement that employees respond to communications from management on their company-issued mobile devices at all times, further led to Mr. Robles and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, ADT maintained a company-wide on-premises rest period policy, which effectively required that Mr. Robles and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Robles and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ADT effectively maintained control over Mr. Robles and/or other aggrieved employees during rest periods.

As a result of ADT's practices and policies, Mr. Robles and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Robles missed most of his rest periods because of the lack of rest period coverage and ADT's failure to schedule rest periods for employees.

ADT also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or

policy, Mr. Robles and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ADT did pay Mr. Robles and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ADT did not pay Mr. Robles and other aggrieved employees at the correct rate of pay for premium wages because ADT failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

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

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

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

During the relevant time period, ADT has knowingly and intentionally provided Mr. Robles and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ADT issued uniform wage statements to Mr. Robles and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, ADT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

Further, because ADT did not calculate Mr. Robles's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, ADT did not list the correct amount of gross wages in compliance with section 226(a)(1).

For the same reason, ADT failed to list the correct amount of net wages in violation of section 226(a)(5). ADT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ADT engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Robles and other aggrieved employees, in violation of section 1198.

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

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

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

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

During the relevant time period, on information and belief, ADT had a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, ADT terminated Mr. Robles on February 9, 2024. However, ADT did not provide him with his final pay until February 15, 2024. Thus, ADT failed to pay Mr. Robles his final wages immediately, in violation of Labor Code section 201.

Additionally, ADT willfully failed to pay Mr. Robles and other aggrieved employees who are no longer employed by ADT all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ADT's employ.

Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment

obligations could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers "effectively act as *agents* of the client employers in discharging the employer's wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements." *DLSE opinion letter 2008.07.07-2.*

During the relevant time period, ADT had an agreement with a payroll service provider, Wisely, for the issuance of payroll cards to employees, including Mr. Robles and other aggrieved employees, to discharge its wage payment obligations to its employees.

Under ADT's payroll debit card program, Mr. Robles and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. Mr. Robles and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. For example, Mr. Robles was subjected to transaction fees, including a \$3 transaction fee, when withdrawing his wages from an ATM. Thus, ADT's payroll debit card program was, and continues to be, unlawful as it did not give Mr. Robles and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. ADT's payroll card program is inconsistent with this policy because ADT's program denies Mr. Robles and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 212 and 213, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, upon information and belief, ADT unlawfully deducted a portion of wages previously paid to Mr. Robles and other aggrieved employees in violation of California Labor Code section 221. On information and belief, ADT systematically, and on a company-wide basis, provided Mr. Robles and other aggrieved employees with payroll debit cards as payment of their wages. Under ADT's payroll debit card program, Mr. Robles and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Mr. Robles and other aggrieved employees were required to pay ATM withdrawal fees and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Robles and other aggrieved employees resulted in a discount of their wages.

ADT's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Robles's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code sections 221 and 224, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, ADT willfully and systematically issued payroll debit cards to Mr. Robles and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. ADT's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Robles and other aggrieved employees. Thus, ADT paid Mr. Robles and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Robles and other aggrieved employees were properly paid.

ADT's failure to pay Mr. Robles and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Robles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 223, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. California Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, ADT did not pay Mr. Robles and other aggrieved employees the correct sick leave rates of pay. ADT failed to correctly use either method of calculation under Labor Code section 246(l) to determine Mr. Robles's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage, ADT paid Mr. Robles and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ADT failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Robles and other aggrieved employees took sick leave and received these other forms of pay, ADT failed to pay all sick leave benefits by paying a lower sick leave pay rate than required.

Specifically, ADT paid Mr. Robles and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

ADT's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Robles and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Robles and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ADT into compliance with Labor Code section 246, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

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

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

During the relevant time period, on information and belief, ADT failed, on a company-wide basis, to provide written notice to Mr. Robles and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, ADT failed to provide Mr. Robles and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that ADT provided to Mr. Robles is blank where the aforementioned wage information should be filled in. ADT's failure to provide Mr. Robles and other aggrieved employees with written notice of basic information regarding their employment with ADT is in violation of California Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

ADT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Robles’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Robles seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Robles, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ADT for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by several horizontal strokes.

Alexander Lima

Copy: ADT LLC (via U.S. Certified Mail)

SENDER: COMPLETE THIS SECTION

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

ADT LLC
1501 YAMATO ROAD
BOCA RATON, FL 33431



9590 9402 8803 4005 5745 76

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0823

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

Received by (Printed Name)

C. Date of Delivery

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

NOV 19 2024

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

II Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

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

On **January 30, 2025**, I served the document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Attorneys for ADT LLC

Lonnie D. Giamela
E-Mail: lgiamela@fisherphillips.com
Carol A. Ibrahim
E-Mail: cibrahim@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 30, 2025**, at Los Angeles, California.

Joan Morris
Type/Print Name


Signature