

December 10, 2024

VIA ON-LINE SUBMISSION ONLY TO:

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Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to MV Transportation; Inc.; MV Public Transportation, Inc.; Westcats)

MV Transportation, Inc.
2711 N. Haskell Ave., #1500
Dallas, TX 75204
Certified Mail Tracking Number: 9414 8112 0620 5920 2231 19

CSC – Lawyers Incorporating Service
Agent for Service of Process for MV Public Transportation, Inc.
2710 Gateway Oaks Dr.,
Sacramento, CA 95833
Certified Mail Tracking Number: 9414 8112 0620 5920 2256 70

MV Public Transportation, Inc.
2711 N. Haskell Ave., #1500
Dallas, TX 75204
Certified Mail Tracking Number: 9414 8112 0620 5920 2203 54

CSC – Lawyers Incorporating Service
Agent for Service of Process for MV Public Transportation, Inc.
2710 Gateway Oaks Dr.,
Sacramento, CA 95833
Certified Mail Tracking Number: 9414 8112 0620 5920 2260 35

WestCats
5251 Vineland Ave. Suite 420,
North Hollywood, CA 91601
Certified Mail Tracking Number: 9414 8112 0620 5920 2537 65

Ervey R. Nava
Agent for Service of Process for WestCats
5251 Vineland Ave. Suite 420,
North Hollywood, CA 91601
Certified Mail Tracking Number: 9414 8112 0620 5920 2559 98

**Re: Labor Code § 2698, et seq. Penalties - PAGA Notice Letter to LWDA
Richard Ryan Oswald v. MV Transportation, Inc., et al.
Superior Court for the County of Contra Costa**



Gentlepersons:

This office represents Plaintiff Richard Ryan Oswald (“Plaintiff”) and other similarly aggrieved employees employed as non-exempt, hourly workers at and based out of Defendants’ locations in California during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2810.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants MV Transportation; Inc., MV Public Transportation, Inc., Westcats, and Does 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff’s class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee within the State of California, and was required to perform work tasks and passenger transportation services throughout California, including the cities Rodeo, Hercules, San Pablo, San Francisco, and many more. Defendant generally provides passenger transportation services in California. Plaintiff and the other similarly situated Employees of Defendants worked in Defendants’ facilities at Defendants’ behest and without being paid all wages due and without being provided all their required meal periods and rest breaks.

Upon information and belief, Plaintiff was employed by Defendants and shared similar job duties and responsibility was subjected to the same policies and practices, and endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions.

Defendants required Plaintiff and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, including by requiring off-the-clock work and unlawful time shaving and rounding, failing to pay them at the appropriate rates for all hours worked, failing to pay all wages due and owing at termination or resignation, and provided Aggrieved Employees with inaccurate wage statements that prevented them from learning of



these unlawful pay practices. Defendants also failed to provide Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants' control and take shortened meal periods and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant MV TRANSPORTATION, INC. is a California stock corporation that lists its principal address in Dallas, Texas and does not list a California office with the California Secretary of State. It lists several registered corporate agents who list addresses in Sacramento, California, and in Sacramento County. MV Transportation, Inc. ("MV Transportation") lists its type of business as "Passenger Transportation Services." Upon information and belief, MV Transportation is a parent company that owns and operates transportation services providers throughout California, including MV Public Transportation, Inc. MV Transportation's website explains that: "MV Transportation is the leading provider of paratransit services and the largest privately-owned passenger transportation contracting firm in the United States. We provide safe, reliable, and affordable transportation services, partnering with over 200 city and county government transit agencies, school districts, universities, and corporations. In addition to paratransit, the company offers fixed route, campus and corporate shuttle, and student transportation services. MV provides freedom for over 110 million passengers each year across 30 states and Canada with a team of more than 20,000 dedicated transit professionals."

The wage statements issued to Plaintiff list MV Public Transportation as his employer with an address in Dallas, Texas, which differs from the name registered with the California Secretary of State Website. Defendants' failure to accurately list the employer on the wage statements issued to Plaintiff and the Aggrieved Employees is evidence of Defendant's systematic and ongoing facial violation of Labor Code § 226(a)(8).

MV PUBLIC TRANSPORTATION, INC. is a California corporation that lists its principal address in Dallas, Texas and does not list a California office with the California Secretary of State. It lists several registered corporate agents who list addresses in Sacramento, California, and in Sacramento County. Upon information and belief, MV Transportation, Inc. operates and does business as MV Public Transportation, Inc., and MV Transportation, Inc. is a joint employer, a d/b/a, or a subsidiary of MV Public Transportation, Inc. Plaintiff was employed by Defendants and provided transportation services in California, including the cities Rodeo, Hercules, San Pablo, San Francisco, and many more, and Defendants employed other Aggrieved Employees in Pinole, California and at other facilities throughout California.

Upon information and belief, MV Transportation, Inc. also operates and does business as WestCats, and MV Transportation, Inc. is a joint employer, a d/b/a, or a subsidiary of WestCats. Defendant WESTCATS is a California corporation that lists its principal address in North Hollywood, California with the California Secretary of State. Plaintiff was employed by Defendants and provided transportation services in California, including the cities Rodeo, Hercules, San Pablo, San Francisco, and many more, and Defendants employed other Aggrieved Employees in Pinole, California and at or based out of other facilities throughout California



During the course of Plaintiff and the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as drivers, driver aides, operators, dispatchers, supervisors, and in similar and related positions based out of their locations in California.

Plaintiff was generally scheduled to work five days per week for seven to eight and half hours per shift, with shift times generally spanning from 3:00 p.m. through 11:30 p.m. However, Plaintiff was required by Defendants to endure substantial off-the-clock work before and after his scheduled shift hours.

Defendants' policy and practice of requiring systematic off-the-clock work flowed in part from their unlawful timekeeping procedures. Defendants required Plaintiff and Aggrieved Employees to record shift start and end times using the company time clock. However, the time punches were not recorded contemporaneously with the meal period beginning and end times and actual hours worked by Plaintiff and Aggrieved Employees.

Additionally, Defendants instructed Plaintiff and the Aggrieved Employees to input into the timekeeping system that they took at least 30 minutes for a meal period and did so before the fifth hour of work as required under the Labor Code and Wage Orders. However, Defendants never scheduled time for a meal period, and the route they created did not allocate time for Plaintiff and Aggrieved Employees to take a full 30-minute meal break. Instead, Plaintiff and Aggrieved Employees were required to eat whenever an opportunity arose, which was rarely possible due to the constraints of the transit schedule and heavy traffic. Nevertheless, Defendants instructed Plaintiff and the Aggrieved Employees to thus record compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by work requirements. Additionally, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. Managers would ask Plaintiff and Aggrieved Employees to modify and adjust any timekeeping entries to reflect a timely meal period was taken for a full 30 minutes to avoid incurring and paying meal period premium penalty wages.

Defendants also required Plaintiff to be prepared to begin work at his scheduled shift start time, and he would be reprimanded if he was not. However, for Plaintiff to do so he had to arrive at the facility well before that start time. Plaintiff's work shifts generally were scheduled to start at 3:00 p.m., and Defendants allowed Plaintiff and Aggrieved Employees to clock in no more than three minutes prior to their shift. However, in order to be prepared to clock in within the allocated time frame, he had to arrive at the facility at least 10 minutes prior so he could change out of his clothes and into his work uniform, which generally took about 3-5 minutes per shift, and then wait in line for time clocks to become available, which could span up to five minutes depending on the pace and length of the line.



Defendants' managers also contacted Plaintiff by calling his personal cell phone regarding work-related matters and scheduling and would do so both throughout the work day and during breaks and also after work hours. Plaintiff was also required to attend meetings and discussions regarding work performance, write-ups, work tasks, etc. before his scheduled shift times, and he also was compelled by Defendants not to record that he was clocked out but to continue working.

Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy and practice of requiring him to work off the clock and without pay. Defendants systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off-the-clock work Defendants required and the actual hours Plaintiff worked or the breaks he received. By failing to pay for all hours worked, and by under-recording regular hours to the detriment of the Aggrieved Employees, Defendants have committed knowing and intentional ongoing violations of the record-keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or retaining inaccurate ones.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working based out of throughout California. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders. Additionally, to the extent Defendants paid Plaintiff and the Aggrieved Employees overtime during a pay period along with other additional forms of remuneration, including bonuses and shift differentials, they underpaid it and miscalculated the regular rate by failing to include these additional forms of remuneration in the regular rate used to calculate and pay the overtime premium wages.



Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required meal periods and the at least two ten-minute rest breaks as required at a minimum for Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize and permit Plaintiff and the employee Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

More specifically, Plaintiff worked shifts that entitled him to at least one meal period, but as addressed above, Defendants' managers required Plaintiff and the Aggrieved Employees to at least 30 minutes for lunches and would deduct that time from hours worked for the shift. However, as addressed above, Defendants never scheduled time for a meal period, and the routes they created did not allocate time for Plaintiff and Aggrieved Employees to take a full 30-minute meal break. Instead, Plaintiff and Aggrieved Employees were required to eat whenever an opportunity arose, which was rarely possible due to the constraints of the transit schedule and heavy traffic. Nevertheless, Defendants instructed Plaintiff and the Aggrieved Employees to thus record compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by work requirements. The tight bus route and management expectations also contributed to Employees working through meal periods or not taking them or they were required to remain under Defendants' control during meal periods.

Additionally, Defendants instructed Plaintiff and the Aggrieved Employees to input into the timekeeping system that they took thirty minutes for a meal period and did so before the fifth hour of work as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff and the Aggrieved Employees to thus record compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by management demands and other work requirements. Plaintiff does not recall ever having taken a meal break, despite the fact that Defendants automatically deducted at least a 30-minute meal period on each work shift without regard to whether it was actually taken or was otherwise unlawful, or Defendants failed to pay the one-hour premium payment.

Therefore, meal period violations systematically occurred ongoing throughout all of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day. To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour premium payment. Upon information and belief, the other Aggrieved Employees were subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five hours



during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off-the-clock work in a manner that would impact when Employees were to receive meal periods and rest breaks, and required them to respond to work calls and inquiries and other demands during breaks, thus leading to further violations.

Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time punch records reflected a meal period of less than thirty minutes. However, upon information and belief, in the event Defendants did pay any meal period premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation, for example by omitting performance-based bonuses and the like from the rate at which meal premiums were paid.

As a result, Defendants' failure to provide Plaintiff and the Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.

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

Rest breaks were neither scheduled nor contemplated by Defendants. During Plaintiff's entire employment duration with Defendants, he cannot recall a time when he took a break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten-minute rest breaks during each of his work shifts. As detailed above, in addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or otherwise received without violation.



Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Aggrieved Employees worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. Even on the occasions when Defendants authorized and permitted Plaintiff to take a first rest break, he was not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirements.

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Aggrieved Employees were and are under Defendants' control when they are working through rest breaks and remaining under Defendants' control. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Aggrieved Employees. Plaintiff and the Employees in Aggrieved Employees were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises and otherwise remain under Defendants' control during rest breaks under Defendants' uniformly applied policies and practices.

Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above-described off-the-clock work and on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively failed to pay for all hours worked and unlawfully deducted wages earned in violation of Labor Code § 221.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246.).

Defendants also failed to provide Employees such as Plaintiff at the time of his employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specifically required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to provide Plaintiff and the aggrieved employee Aggrieved Employees certain specific information upon hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such information when he



was hired, and upon information and belief Defendants committed similar violations in connection with similarly situated and Aggrieved Employees.

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

Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Aggrieved Employees, along with the appropriate applicable rates, among others requirements. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked. Defendants also unlawfully failed to list the accurate employer on wage statements they issued to Plaintiff and the Aggrieved Employees.

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



Additionally, Defendants have regularly required Plaintiff and the Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included protective gear expenses and cell phone-related expenses Plaintiff incurred in responding to calls from managers and co-workers. Plaintiff and the Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control during breaks and due to the work demands placed upon them by Defendants’ management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates



Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties or remain under Defendant's control. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime rates or the correct overtime rate (addressed above) for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and



statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods due to the work demands placed upon them by Defendants' management, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks due to Defendants' policies and practices.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e., one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations due to the work demands placed upon them by Defendants' management, and Defendants' policy discouraged and effectively prevented Aggrieved Employees from leaving Defendants' premises. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of



them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above, and failed to list accurate rates of pay due to miscalculations of overtime and premium pay. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."



Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, “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.” As discussed above, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees’ earned wages, including by the above described off the clock work and unlawful rounding and overtime miscalculation. By not compensating Employees for all hours worked, Defendant unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants’ employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties



and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due. Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave

Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater,



but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.” As also addressed above, Defendants’ strict overtime avoidance policy also compelled Plaintiff’s manager to add what should have been overtime hours to payroll as Plaintiff’s sick days or paid time off days.

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

Failure to Provide Information Upon Hiring Pursuant to Labor Code § 2810.5:

Labor Code § 2810.5 provides that: “At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing” specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred in responding to calls, texts, and emails from managers and colleagues. Upon information and belief, Defendants also failed to pay for business expenses incurred by Aggrieved Employees, including phone coverage and the like. Defendants thus uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees.

Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.



Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 et seq., including as follows:

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

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

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



employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

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

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

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 212, 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against MV Transportation, Inc., MV Public Transportation, Inc., Westcats and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,
D.LAW INC.

A handwritten signature in black ink, appearing to read 'Alvin B. Lindsay', with a horizontal line underneath.

Alvin B. Lindsay
a.lindsay@d.law
Melissa Rodriguez
m.rodriguez@d.law

Cc: MV Transportation, Inc.; MV Public Transportation, Inc.; Westcats by Certified Mail

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
450 N. Brand Blvd., Suite 840,
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff RICHARD RYAN OSWALD, on behalf
of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

RICHARD RYAN OSWALD, an individual,
on behalf of himself and others similarly
situated,

Plaintiff,

vs.

MV TRANSPORTATION, INC., a
California stock corporation; MV PUBLIC
TRANSPORTATION, INC. a California
stock corporation; WESTCATS, a California
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
11. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff RICHARD RYAN OSWALD (hereinafter "Plaintiff"), on behalf of himself and
2 other similarly situated non-exempt, hourly employees employed by Defendants within the state of
3 California during the relevant time period (collectively, "Employees"; individually, "Employee"),
4 complains of Defendants, and each of them, as follows:

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly employees, including those employed as
9 drivers, driver aides, operators, dispatchers, supervisors, and in similar and in similar and related
10 positions, by Defendants MV TRANSPORTATION, INC., a California corporation; MV PUBLIC
11 TRANSPORTATION, INC. a California corporation, WESTCATS, a California corporation, and
12 DOES 1 through 50, inclusive (all defendants being collectively referred to herein as
13 "Defendants"). Plaintiff alleges that Defendants, and each of them, violated various provisions of
14 the California Labor Code, relevant orders of the Industrial Welfare Commission ("IWC"), and the
15 California Business & Professions Code, and seeks redress for these violations.

16 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
17 Defendants in positions generally pertaining to providing passenger transportation services.
18 Plaintiff, and upon information and belief, the other similarly situated Employees in the Class,
19 were required to perform work tasks and passenger transportation services throughout California,
20 including the cities Rodeo, Hercules, San Pablo, San Francisco, and many more. Plaintiff was
21 employed by Defendants as a driver and was tasked with transporting passengers on a bus owned
22 by Defendants.

23 3. Defendants employed other similarly situated Employees in similar and related
24 positions based out of Defendants' facility in Pinole, California, and would provide
25 transportation services in California, including the cities Rodeo, Hercules, San Pablo, San
26 Francisco, and many more. Plaintiff and the other similarly situated Class Members worked at
27 Defendants' behest without being paid all wages due and without being provided all required
28 breaks. More specifically, Plaintiff and the other similarly situated Class Members were employed

1 by Defendants and shared similar job duties and responsibilities, were subjected to the same
2 policies and practices, and endured similar violations at Defendants' hands.

3 4. Defendants required Plaintiff and the Employees in the Class to work off the clock
4 and failed to accurately record the hours they were on the clock, failed to pay them at the
5 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
6 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
7 statements that prevented them from learning of these unlawful pay practices. Defendants also
8 failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were
9 required to remain under Defendants' control and were not provided with the opportunity to take
10 full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and
11 the applicable paragraphs of the IWC Wage Orders.

12 5. Defendant MV TRANSPORTATION, INC. is a California stock corporation that
13 lists its principal address in Dallas, Texas and does not list a California office with the California
14 Secretary of State. It lists several registered corporate agents who list addresses in Sacramento,
15 California, and in Sacramento County. MV Transportation, Inc. ("MV Transportation") lists its
16 type of business as "Passenger Transportation Services." Upon information and belief, MV
17 Transportation is a parent company that owns and operates transportation services providers
18 throughout California, including MV Public Transportation, Inc. MV Transportation's website
19 explains that: "MV Transportation is the leading provider of paratransit services and the largest
20 privately-owned passenger transportation contracting firm in the United States. We provide safe,
21 reliable, and affordable transportation services, partnering with over 200 city and county
22 government transit agencies, school districts, universities, and corporations. In addition to
23 paratransit, the company offers fixed route, campus and corporate shuttle, and student
24 transportation services. MV provides freedom for over 110 million passengers each year across 30
25 states and Canada with a team of more than 20,000 dedicated transit professionals."

26 6. The wage statements issued to Plaintiff list MV Public Transportation as his
27 employer with an address in Dallas, Texas, which differs from the name registered with the
28 California Secretary of State Website. Defendants' failure to accurately list the employer on the

1 wage statements issued to Plaintiff and the Class Members is evidence of Defendant's systematic
2 and ongoing facial violation of Labor Code § 226(a)(8).

3 7. MV PUBLIC TRANSPORTATION, INC. is a California corporatoin that lists its
4 principal address in Dallas, Texas and does not list a California office with the California
5 Secretary of State. It lists several registered corporate agents who list addresses in Sacramento,
6 California, and in Sacramento County. Upon information and belief, MV Transportation, Inc.
7 operates and does business as MV Public Transportation, Inc., and MV Transportation, Inc. is a
8 joint employer, a d/b/a, or a subsidiary of MV Public Transportation, Inc. Plaintiff was employed
9 by Defendants and provided transportation services in California, including the cities Rodeo,
10 Hercules, San Pablo, San Francisco, and many more, and Defendants employed other Class
11 Members in Pinole, California and at other facilities throughout California.

12 8. Upon information and belief, MV Transportation, Inc. also operates and does
13 business as WestCats, and MV Transportation, Inc. is a joint employer, a d/b/a, or a subsidiary of
14 WestCats. Defendant WESTCATS is a California corporation that lists its principal address in
15 North Hollywood, California with the California Secretary of State. Plaintiff was employed by
16 Defendants and provided transportation services in California, including the cities Rodeo,
17 Hercules, San Pablo, San Francisco, and many more, and Defendants employed other Class
18 Members in Pinole, California and at or based out of other facilities throughout California

19 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Contra Costa
25 County and Defendants have not listed a principal California address. Defendants also employ
26 Class Members at or based out of facilities in Contra Costa County and throughout California.

27 10. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours, or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class Members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class Members to work, or engaged them, thereby creating a common law employment relationship with the Employee Class Members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class Members.

FACTUAL BACKGROUND

12. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class Members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular, and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class Members all wages due and owing, including compensation for off-the-clock work, uncompliant meal and rest breaks, and Defendants’ failure to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and

1 applicable paragraphs of the IWC Wage Orders.

2 13. During the course of Plaintiff and the Class Members' employment with
3 Defendants, they were not paid all wages they were owed, including for all work performed
4 (resulting in "off the clock" work) and for all their overtime hours worked, and they were not
5 paid at the required rates for overtime. This has resulted in systematic and ongoing violations of
6 the California Labor Code and relevant IWC Wage Orders. Upon information and belief,
7 Defendants employ other non-exempt, hourly employees as drivers, driver aides, operators,
8 dispatchers, supervisors, and in similar and related positions based out of their locations in
9 California.

10 14. Plaintiff was generally scheduled to work five days per week for seven to eight
11 and half hours per shift, with shift times generally spanning from 3:00 p.m. through 11:30 p.m.
12 However, Plaintiff was required by Defendants to endure substantial off-the-clock work before
13 and after his scheduled shift hours.

14 15. Defendants' policy and practice of requiring systematic off-the-clock work flowed
15 in part from their unlawful timekeeping procedures. Defendants required Plaintiff and Class
16 Members to record shift start and end times using the company time clock. However, the time
17 punches were not recorded contemporaneously with the meal period beginning and end times and
18 actual hours worked by Plaintiff and the Class.

19 16. Additionally, Defendants instructed Plaintiff and the Class Members to input into
20 the timekeeping system that they took at least 30 minutes for a meal period and did so before the
21 fifth hour of work as required under the Labor Code and Wage Orders. However, Defendants
22 never scheduled time for a meal period, and the route they created did not allocate time for
23 Plaintiff and Class Members to take a full 30-minute meal break. Instead, Plaintiff and Class
24 Members were required to eat whenever an opportunity arose, which was rarely possible due to
25 the constraints of the transit schedule and heavy traffic. Nevertheless, Defendants instructed
26 Plaintiff and the Class Members to thus record compliant meal breaks without regard to whether
27 they were actually taken on time or for the full duration or were interrupted by work
28 requirements. Additionally, by deducting 30 minutes for a meal period that was generally not

1 lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of
2 hours worked from each Employee's daily work shifts. Managers would ask Plaintiff and Class
3 Members to modify and adjust any timekeeping entries to reflect a timely meal period was taken
4 for a full 30 minutes to avoid incurring and paying meal period premium penalty wages.

5 17. Defendants also required Plaintiff to be prepared to begin work at his scheduled
6 shift start time, and he would be reprimanded if he was not. However, for Plaintiff to do so he had
7 to arrive at the facility well before that start time. Plaintiff's work shifts generally were scheduled
8 to start at 3:00 p.m., and Defendants allowed Plaintiff and Class Members to clock in no more
9 than three minutes prior to their shift. However, in order to be prepared to clock in within the
10 allocated time frame, he had to arrive at the facility at least 10 minutes prior so he could change
11 out of his clothes and into his work uniform, which generally took about 3-5 minutes per shift,
12 and then wait in line for time clocks to become available, which could span up to five minutes
13 depending on the pace and length of the line.

14 18. Defendants' managers also contacted Plaintiff by calling his personal cell phone
15 regarding work-related matters and scheduling and would do so both throughout the work day
16 and during breaks and also after work hours. Plaintiff was also required to attend meetings and
17 discussions regarding work performance, write-ups, work tasks, etc. before his scheduled shift
18 times, and he also was compelled by Defendants not to record that he was clocked out but to
19 continue working.

20 19. Plaintiff was therefore not paid for all his hours worked at the required minimum,
21 overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy
22 and practice of requiring him to work off the clock and without pay. Defendants systematically
23 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
24 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
25 day at the required double time rate. Upon information and belief, the Class Members were bound
26 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
27 hands as Plaintiff.

28

1 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
2 would permit Plaintiff to discover the nature and extent of the off-the-clock work Defendants
3 required and the actual hours Plaintiff worked or the breaks he received. By failing to pay for all
4 hours worked, and by under-recording regular hours to the detriment of the Class Members,
5 Defendants have committed knowing and intentional ongoing violations of the record-keeping
6 requirements under the Labor Code, including section 1174, by either failing to maintain records
7 or retaining inaccurate ones.

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

17 22. Therefore, from at least four years prior to the filing of this lawsuit and continuing
18 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
19 hours worked and failing to pay minimum wages for all time worked, as required by California
20 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
21 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
22 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
23 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
24 Labor Code § 510 and the corresponding sections of IWC Wage Orders. Additionally, to the
25 extent Defendants paid Plaintiff and the Class members overtime during a pay period along with
26 other additional forms of remuneration, including bonuses and shift differentials, they underpaid it
27 and miscalculated the regular rate by failing to include these additional forms of remuneration in
28 the regular rate used to calculate and pay the overtime premium wages.

1 23. Defendants also failed to provide Plaintiff and the Class Members with their
2 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
3 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to
4 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
5 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
6 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
7 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
8 IWC Wage Order(s).

9 24. More specifically, Plaintiff worked shifts that entitled him to at least one meal
10 period, but as addressed above, Defendants' managers required Plaintiff and the Class Members to
11 at least 30 minutes for lunches and would deduct that time from hours worked for the shift.
12 However, as addressed above, Defendants never scheduled time for a meal period, and the routes
13 they created did not allocate time for Plaintiff and Class Members to take a full 30-minute meal
14 break. Instead, Plaintiff and Class Members were required to eat whenever an opportunity arose,
15 which was rarely possible due to the constraints of the transit schedule and heavy traffic.
16 Nevertheless, Defendants instructed Plaintiff and the Class Members to thus record compliant
17 meal breaks without regard to whether they were actually taken on time or for the full duration or
18 were interrupted by work requirements. The tight bus route and management expectations also
19 contributed to Employees working through meal periods or not taking them or they were required
20 to remain under Defendants' control during meal periods.

21 25. Additionally, Defendants instructed Plaintiff and the Class Members to input into
22 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth
23 hour of work as required under the Labor Code and Wage Orders. Defendants instructed Plaintiff
24 and the Class Members to thus record compliant meal breaks without regard to whether they were
25 actually taken on time or for the full duration or were interrupted by management demands and
26 other work requirements. Plaintiff does not recall ever having taken a meal break, despite the fact
27 that Defendants automatically deducted at least a 30-minute meal period on each work shift
28 without regard to whether it was actually taken or was otherwise unlawful, or Defendants failed to

1 pay the one-hour premium payment.

2 26. Therefore, meal period violations systematically occurred ongoing throughout all
3 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
4 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
5 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
6 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
7 premium payment. Upon information and belief, the other Class Members were subjected to
8 similar unlawful policies and practices and endured similar violations as Plaintiff.

9 27. Defendants thus failed to provide all the legally required unpaid, off-duty meal
10 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
11 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
12 Members were required to perform work as ordered by Defendants for more than five hours
13 during a shift without receiving compliant meal periods. Additionally, as addressed above,
14 Defendants followed a practice of requiring off-the-clock work in a manner that would impact
15 when Employees were to receive meal periods and rest breaks, and required them to respond to
16 work calls and inquiries and other demands during breaks, thus leading to further violations.

17 28. Upon information and belief, Defendants' systems did not automatically generate a
18 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
19 into a work shift or in the event the time punch records reflected a meal period of less than thirty
20 minutes. However, upon information and belief, in the event Defendants did pay any meal period
21 premiums, they did so at the employee's customary regular rate of hourly compensation without
22 including all forms of remuneration in that hourly rate calculation, for example by omitting
23 performance-based bonuses and the like from the rate at which meal premiums were paid.

24 29. As a result, Defendants' failure to provide Plaintiff and the Class Members with all
25 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
26 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
27 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at
28 each Employee's effective regular hourly rate of compensation for each meal period or rest break

1 that Defendants failed to provide or deficiently provided.

2 30. Therefore, for at least four years prior to the filing of this action and through to the
3 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
4 not provided with the opportunity to take required breaks as required under the Labor Code and
5 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
6 Class Members were provided with a meal period, it was often untimely or interrupted, or was
7 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.
8 Meal period violations thus occurred in one or more of the following manners:

- 9 (a) Class Members were not provided full thirty-minute duty free meal periods
10 for work days in excess of five hours and were not compensated one hour's
11 wages in lieu thereof, or were not compensated at the correct regular rate
12 of compensation, all in violation of, among others, Labor Code §§ 226.7,
13 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 14 (b) Class Members were not provided second full thirty-minute duty free meal
15 periods for work days in excess of ten hours;
- 16 (c) Class Members were required to work through at least part of their daily
17 meal period(s);
- 18 (d) Meal periods were provided after five hours of continuous work during a
19 shift; and
- 20 (e) Class Members were restricted in their ability to take a full thirty-minute
21 meal period.

22 31. Similar violations resulted from Defendants' failure to authorize and permit
23 Plaintiff and the Class Members to take duty-free, net ten-minute rest breaks for every four hours
24 of shift work, or a major fraction thereof. Plaintiff and the other similarly situated Class Members
25 were either not authorized permitted the opportunity to take a rest break, or were required to
26 remain under Defendants' control and respond to calls and instructions from management and job
27 demands if and when they even attempted to take one. Upon information and belief, Defendants
28 thus also failed to authorize and permit employees to leave the premises during rest breaks,

1 evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members to
2 remain under their control during required off-duty rest break times.

3 32. Rest breaks were neither scheduled nor contemplated by Defendants. During
4 Plaintiff's entire employment duration with Defendants, he cannot recall a time when he took a
5 break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten-
6 minute rest breaks during each of his work shifts. As detailed above, in addition to failing to
7 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal
8 periods that were rarely provided or otherwise received without violation.

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

16 34. During rest periods, employers must relieve employees of all duties and relinquish
17 control over how employees spend their time. Plaintiff and the Class Members were and are
18 under Defendants' control when they are working through rest breaks and remaining under
19 Defendants' control. Defendants have also provided either impermissibly shortened or untimely
20 meal and rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class
21 were thus not authorized and permitted to take lawful rest periods, were systematically required
22 by Defendants to work through or during breaks, and were not provided with one hour's wages in
23 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus
24 making them either untimely or shortened and on-duty, and they were also prevented from
25 leaving the premises and otherwise remain under Defendants' control during rest breaks under
26 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in
27 one or more of the following manners:
28

- 1 (a) Class Members were required to work without being provided a minimum
2 ten minute rest period for every four hours or a major fraction thereof
3 worked and were not compensated one hour of pay at their regular rate of
4 compensation for each workday that a rest period was not provided;
- 5 (b) Class Members were not authorized and permitted to take timely rest periods
6 for every four hours worked, or a major fraction thereof; and
- 7 (c) Class Members were required to remain on duty during and under
8 Defendants' control during rest periods or otherwise had their rest periods
9 interrupted by work demands.

10 35. From at least four years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above-described off-the-clock work and
13 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
14 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely
15 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
16 that was generally not lawfully provided if at all, Defendants effectively failed to pay for all hours
17 worked and unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

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

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

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

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

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

40. Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class Members, along with the appropriate applicable rates, among others requirements. Plaintiff and

1 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
2 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
3 applicable California IWC Wage Orders by failing to maintain time records showing when the
4 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
5 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
6 payment of wages and accurately reporting total hours worked. Defendants also unlawfully failed
7 to list the accurate employer on wage statements they issued to Plaintiff and the Class members.

8 41. Defendants further required Plaintiff and the Class members to work hours off the
9 clock for which they were not compensated. They were required to endure off-the-clock work
10 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
11 provided with sick pay and supplemental sick leave and were subjected to systematic off-the-clock
12 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
13 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
14 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
15 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
16 two hours of their resignation, as required by California wage-and-hour laws, including under
17 Labor Code § 203.

18 42. Additionally, from at least four years prior to the filing of this lawsuit and
19 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
20 incur necessary business expenses in the course of performing their required job duties without
21 reimbursement. These included protective gear expenses and cell phone-related expenses Plaintiff
22 incurred in responding to calls from managers and co-workers. Plaintiff and the Class Members
23 must be reimbursed for these necessary business expenses under Labor Code § 2802 and
24 Defendants systematically failed to do so.

25 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
26 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
27 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
28 1194.2 1197, 1198, 1198.5, 1199, and 2802 and California Code of Regulations, Title 8, section

1 11000 *et seq.*

2 44. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
3 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
4 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
5 fraudulent practices alleged in this Complaint.

6 **CLASS ALLEGATIONS**

7 45. Plaintiff brings this class action on behalf of himself and all others similarly
8 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often
9 referred to as “the Class” or “Class Members”) defined as follows: “All individuals employed by
10 Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and
11 ending on a date as determined by the Court (“the Class Period”), and who have been employed as
12 non-exempt, hourly employees by Defendants within the State of California.” This includes all
13 types of drivers, driver aides, operators, dispatchers, supervisors, and those in similar and related
14 positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

15 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not
16 compensated for all hours worked for Defendants at the applicable minimum wage.

17 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
18 compensated for all hours worked for Defendants at the required rates of pay, including for all
19 hours worked in excess of eight in a day and/or forty in a week.

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

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

27 e. Subclass 5. Wage Statement Subclass. All Class Members who, within the
28 applicable limitations period, were not provided with accurate itemized wage statements.

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

4 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
5 Members who were subject to Defendants' policy and practice of not timely paying all wages
6 earned when they were due and payable at least twice monthly.

7 h. Subclass 8. Termination Pay Subclass. All Class Members who, within the
8 applicable limitations period, either voluntarily or involuntarily separated from their employment
9 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
10 termination.

11 j. Subclass 9. Payroll Records Subclass. All Class Members who were subject to
12 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
13 by California wage-and-hour laws.

14 k. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
15 necessary and reasonable expenses in connection with performing their job duties for Defendants
16 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

17 l. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a
18 result of Defendants' business acts and practices, to the extent such acts and practices are found to
19 be unlawful, deceptive, and/or unfair.

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

24 47. Defendants, as a matter of company policy, practice and procedure, and in violation
25 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
26 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
27 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
28 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the

benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

48. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class Members that Defendants are required to maintain under California law.

A. Numerosity

49. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of Class Member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class Members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;

- 1 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
2 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
3 premium pay in lieu thereof;
- 4 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
5 Orders, by failing to authorize and permit Employees to take requisite rest breaks
6 or provide premium pay in lieu thereof;
- 7 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
8 providing employees with all required sick days and COVID-19 supplemental sick
9 leave;
- 10 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
11 inaccurate wage statements;
- 12 h. Whether Defendants violated Labor Code § 221;
- 13 i. Whether Defendants violated Labor Code §§ 201-203 by failing to pay wages and
14 compensation due and owing at the time of termination of employment;
- 15 j. Whether Defendants' conduct was willful;
- 16 k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the
17 IWC Wage Orders by failing to maintain accurate records of Class Members'
18 earned wages and work periods;
- 19 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
20 Employees during the relevant time period for all hours worked, whether regular or
21 overtime;
- 22 m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
23 wages earned at least twice monthly;
- 24 n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
25 business expenses incurred by Employees;
- 26 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
27 p. Whether Employees are entitled to equitable relief pursuant to Business and
28 Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 51. The claims of the named plaintiff are typical of those of the other Employees. The
3 Employee Class Members all sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
5 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
6 the off the clock work and meal and rest violations he was required to endure are typical of those
7 of the other Class Members.

8 **D. Adequacy of Representation**

9 52. Plaintiff will fairly and adequately represent and protect the interest of the
10 Employee Class Members. Counsel who represents Plaintiff and the Employees in the Class are
11 experienced and competent in litigating employment class actions.

12 **E. Superiority of Class Action**

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

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

1 55. Class action treatment will allow those persons similarly situated to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial system.
3 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
4 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
5 set forth the subject and nature of the instant action. The Defendants' own business records can be
6 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
7 that any further notice is required additional media and/or mailings can be used.

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

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

23 ///

24 ///

25 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

59. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off-the-clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' management and by the unlawful deduction of hours or by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off-the-clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class Members, including by requiring systematic off-the-clock work. To the extent any local wage ordinances were also applicable to paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

61. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be

1 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
2 applicable minimum wage rate fixed by the commission for work during the relevant period is
3 found in the Wage Orders.

4 62. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
6 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to recover in a civil action the
8 unpaid balance of the full amount of this minimum wage or overtime compensation, including
9 interest thereon, reasonable attorney’s fees and costs of suit.”

10 63. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
12 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
13 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
14 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
15 the absence of a contractually agreed upon one.

16 64. In committing these violations of the California Labor Code, Defendants
17 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
18 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
19 time worked by Plaintiff and other members of the Class, including by requiring off the clock
20 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
21 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
22 Welfare Commission requirements and other applicable laws and regulations. As a result of these
23 violations, Defendants also failed to timely pay all wages earned in accordance with California
24 Labor Code § 1194.

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

1 66. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
2 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
3 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
4 pay each employee minimum wages.

5 67. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are
6 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
7 interest thereon.

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

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

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

3 **(Against All Defendants)**

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

6 71. California Labor Code § 1194 provides that “any employee receiving less than the
7 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
9 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
10 may be maintained directly against the employer in an employee’s name without first filing a
11 claim with the Division of Labor Standards and Enforcement.

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

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

26 74. Defendants thus had a consistent policy of not paying Employees wages for all
27 hours worked, including hours at their required regular, overtime, and double-time rates.
28 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted

1 and/or, modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
2 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
3 the Class Members all earned and owed straight time and overtime wages and other benefits, in
4 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
5 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
6 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
7 employees to work through meal periods or remain under Defendants' control when they were
8 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
9 respond to demands from managers.

10 75. Therefore, Employees were not properly compensated, nor were they paid overtime
11 rates for hours worked in excess of eight hours in a given day and/or forty hours in a given week.
12 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
13 Class Members to work through meal periods when they were required to be clocked out or to
14 otherwise work off the clock to complete their daily job duties.

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

20 77. Additionally, Labor Code § 558(a) provides "any employer or other person acting
21 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
23 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
24 pay period for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
28 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in

1 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
2 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
3 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
4 Code § 558.

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

11 79. Employees have been damaged by these violations of California Labor Code §§
12 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
13 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
14 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
15 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
16 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
17 any order or ruling of the commission.”

18 80. Consequently, pursuant to the California Labor Code, including Labor Code §§
19 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
20 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
21 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
22 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
23 against Defendants, and each of them, and any additional sums as provided by the Labor Code
24 and/or other statutes.

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1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

25 85. Moreover, Defendants failed to compensate Employees for each meal period not
26 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
27 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
28 employee a meal period in accordance with this section, the employer shall pay the employee one

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

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

14 **FOURTH CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

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

1 breaks. Employees were often required to work or to otherwise remain under Defendants' control
2 during rest periods, including by responding to work requirements, and had breaks provided
3 untimely as a result of the above described off the clock work. Plaintiff and the Class Members
4 were also not permitted to leave their work premises during rest breaks.

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

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

12 92. Defendants failed to authorize and permit Plaintiff and the Class Members to take
13 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
14 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
15 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
16 12 and 20 of the applicable IWC Wage Orders.

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

22 **FIFTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 226(a)**
24 **(Against All Defendants)**

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

27 95. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, and the corresponding number of hours worked at each hourly rate; these
2 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
3 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
4 statements may be given to the employee separately from the payment of wages; in either case the
5 employer must give the employee these statements twice a month or each time wages are paid.

6 96. Defendants failed to provide Plaintiff and the similarly situated Employee Class
7 Members with accurate itemized wage statements in writing, as required by the Labor Code and
8 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
9 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
10 including for all overtime and double time hours worked and for deficient meal periods and rest
11 breaks, all of which Defendants knew or reasonably should have known were owed to the
12 Employees, as alleged above.

13 97. Throughout the liability period, Defendants intentionally failed to furnish to
14 Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately
15 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
16 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
17 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
18 the employee and only the last four digits of his or her social security number or an employee
19 identification number other than a social security number, (8) the name and address of the legal
20 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
22 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
23 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
24 Members with such timely and accurate wage and hour statements.

25 98. Plaintiff and the Class Members suffered injury as a result of Defendants'
26 knowing and intentional failure to provide them with the wage and hour statements as required by
27 law and are presumed to have suffered injury and entitled to penalties under Labor Code §
28 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide

1 accurate and complete information as required by any one or more of items Labor Code § 226
2 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily
3 determine from the wage statement alone one or more of the following: (i) The amount of the
4 gross wages or net wages paid to the employee during the pay period or any of the other
5 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
6 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross
7 wages to determine the net wages paid to the employee during the pay period, (iii) The name and
8 address of the employer and, (iv) The name of the employee and only the last four digits of his or
9 her social security number or an employee identification number other than a social security
10 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
11 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
12 without reference to other documents or information.

13 99. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
14 are required “to pay each employee, on the established payday for the period involved, not less
15 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
16 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
17 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class Members
18 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
19 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
20 IWC Wage Orders.

21 100. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
22 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
23 Class suffered injuries, including among other things confusion over whether they received all
24 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
25 them to make mathematical computations to analyze whether the wages paid in fact compensated
26 them correctly for all hours worked.

27 101. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
28 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of

1 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
2 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
3 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
4 an award of costs and reasonable attorneys' fees.

5 **SIXTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 221**
7 **(Against All Defendants)**

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

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

15 104. Defendants unlawfully received and/or collected wages from the Employees in the
16 Class by requiring off-the-clock work, by miscalculating overtime, and by automatically deducting
17 time for meal periods when they were not lawfully provided and not paying one hour of pay at the
18 regular rate of compensation for every meal and rest period violation endured by Plaintiff and the
19 other Class Members, as alleged above. In addition to failing to authorize and permit rest breaks,
20 Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or
21 otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was
22 generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least
23 30 minutes of hours worked from each Employee's daily work shifts. By not compensating
24 Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of
25 Labor Code § 221.

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

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

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

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

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

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

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

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

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

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

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

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

20 114. The wages withheld from these Employees by Defendants remained due and owing
21 for more than thirty days from the date of separation from employment. Additionally, Defendants
22 failed to pay Plaintiff her final check at the time of her termination.

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

1 required time was willful within the meaning of Labor Code § 203.

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

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

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

20 **(Against All Defendants)**

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

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

27 120. During the course of Plaintiff’s and Employees’ employment, Defendants
28 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as

1 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
2 premium pay as discussed above and failing to document and pay for actual hours worked.

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

6 122. Defendants have maintained a common unlawful policy and practice of failing to
7 accurately record all hours worked and all meal period start and end times and by adjusting or
8 otherwise rounding and shaving them down.

9 123. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
10 knew wages to be due but failed to pay them.

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

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

15 **(Against All Defendants)**

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

18 126. Plaintiff is informed and believes and based thereon alleges that throughout the
19 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-
20 related expenses they incurred. Defendants required Plaintiff and the Class Members to use their
21 cellular phones to conduct work-related business and failed to reimburse for protective gear.
22 Plaintiff and the Class Members must be reimbursed for these necessary business expenses under
23 Labor Code § 2802 and Defendants systematically failed to do so.

24 127. Defendants thus followed a uniform policy and practice of failing to reimburse
25 Employees for these necessary work-related expenses or losses incurred in the direct discharge of
26 their job duties during employment with Defendants and at the direction of the Defendants
27 pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

28 128. Defendants' knowing and willful failure to reimburse lawful necessary work-

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

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

14 **ELEVENTH CAUSE OF ACTION**
15 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
16 **(Against All Defendants)**

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

19 131. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
20 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
21 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
22 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
23 the public interest within the meaning of Code of Civil Procedure § 1021.5.

24 132. Plaintiff is a "person" within the meaning of the Business & Professions Code
25 § 17204, has suffered injury, and therefore, has standing to bring this cause of action for
26 injunctive relief, restitution, and other appropriate equitable relief.

27 133. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
28 business practices. By the conduct alleged herein, Defendants' practices were deceptive and

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

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

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

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

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

27 138. By the conduct alleged herein, Defendants have engaged and continue to engage in
28 a business practice which violates California and federal law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
2 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
3 Court should issue declaratory and other equitable relief pursuant to California Business &
4 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
5 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

15 **RELIEF REQUESTED**

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
20 the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of all unpaid wages, including overtime
24 and double-time pay, as may be proven;
- 25 5. For compensatory damages in the amount of the hourly wage made by Employees
26 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
27 years prior to the filing of this action, as may be proven;
- 28 6. For compensatory damages in the amount of the hourly wage made by Employees

1 for each day requisite rest breaks were not provided or were deficiently provided where no
2 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
3 be proven;

4 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

5 8. For restitution and/or damages and penalties for Defendants' failure to pay all
6 wages due twice monthly under Labor Code § 204, as may be proven;

7 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
8 for all Class Members in violation of Labor Code § 221, as may be proven;

9 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
10 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

12 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

13 13. For damages and restitution for failure to reimburse all reasonable and necessary
14 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

15 14. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

17 15. For an order enjoining Defendants and their agents, servants, and employees, and
18 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
19 duties adumbrated in this Complaint;

20 16. For other wages and penalties under the Labor Code as may be proven;

21 17. For all general, special, and incidental damages as may be proven;

22 18. For an award of pre-judgment and post-judgment interest;

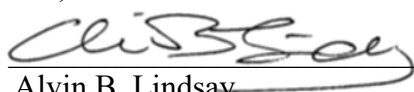
23 19. For an award providing for the payment of the costs of this suit;

24 20. For an award of attorneys' fees; and

25 21. For such other and further relief as this Court may deem proper and just.

26 DATED: December 10, 2024

D.LAW, INC.

27 By: 

Alvin B. Lindsay

Melissa Rodriguez

Attorneys for Plaintiff RICHARD RYAN
OSWALD and all others similarly situated

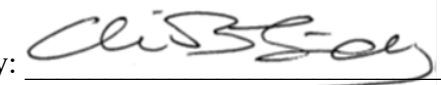
DEMAND FOR JURY TRIAL

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

DATED: December 10, 2024

D.LAW, INC.

By:



David Yeremian

Alvin B. Lindsay

Melissa Rodriguez

Attorneys for Plaintiff RICHARD RYAN

OSWALD and all others similarly situated