

GRAHAMHOLLIS APC  
3555 FIFTH AVENUE, SUITE 200  
SAN DIEGO, CALIFORNIA 92103

1 GRAHAMHOLLIS APC  
Graham S.P. Hollis (SBN 120577)  
2 ghollis@grahamhollis.com  
Hali M. Anderson (SBN 261816)  
3 handerson@grahamhollis.com  
3555 Fifth Avenue, Suite 200  
4 San Diego, California 92103  
Telephone: 619.692.0800  
5 Facsimile: 619.692.0822

6 Attorneys for Plaintiff Christian Headley

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/29/2019** at 10:54:03 AM  
Clerk of the Superior Court  
By Linda Sheffa, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10 CHRISTIAN HEADLEY, individually and on  
behalf of all similarly situated employees of  
11 Defendants in the State of California,

12 Plaintiff,

13 v.

14 PROFESSIONAL MAINTENANCE  
SYSTEMS, INC.; and DOES 1 THROUGH  
15 50, inclusive,

16 Defendants.

Case No.: 37-2019-00045619-CU-OE-CTL

*Unlimited Civil*  
*Amount Demanded exceeds \$25,000.00*

**COMPLAINT**

**CLASS ACTION**  
**[Cal. Code Civ. Proc. § 382]**

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Pay Reporting Time Pay;
6. Failure to Indemnify Necessary Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment;
9. Violation of Business & Professions Code §17200, *et seq.*; and

**– JURY TRIAL DEMANDED –**

1 CHRISTIAN HEADLEY, individually and on behalf of all other similarly situated employees of  
2 PROFESSIONAL MAINTENANCE SYSTEMS, INC., and DOES 1 through 50, inclusive, alleges as  
3 follows:

4 **I. INTRODUCTION**

5 1. Plaintiff CHRISTIAN HEADLEY (“Plaintiff”) brings this individual and putative class  
6 action against Defendants PROFESSIONAL MAINTENANCE SYSTEMS, INC., and DOES 1 through  
7 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the  
8 California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders; on  
9 information and belief, IWC Wage Order No. 5.

10 2. Plaintiff brings this action on behalf of all non-exempt employees, who were employed by  
11 Defendants in the State of California and who worked as a non-exempt employee during the applicable  
12 relevant time period (hereinafter “similarly situated employees”).

13 3. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their  
14 employment-related costs by systematically violating California wage and hour laws and engaging in  
15 unlawful and unfair business practices.

16 4. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward  
17 Plaintiff and other similarly situated employees in California include, but are not limited to:

- 18 a. Failure to provide a first off-duty meal period of at least 30-minutes before the  
19 commencement of the sixth hour of work;
- 20 b. Failure to authorize and permit off-duty paid rest periods;
- 21 c. Failure to pay all minimum and regular wages for all hours worked;
- 22 d. Failure to pay all overtime wages;
- 23 e. Failure to pay reporting time pay;
- 24 f. Failure to indemnify necessary business expenses;
- 25 g. Failure to maintain accurate records;
- 26 h. Failure to provide accurate itemized wage statements; and
- 27 i. Failure to timely pay all wages due during and upon separation of employment.

28 ///

1 5. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory  
2 judgment, injunctive relief, statutory penalties, and monetary relief on behalf of himself and all other  
3 similarly situated employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid  
4 wages, interest, attorney’s fees, damages, liquidated damages, statutory penalties, and costs pursuant to  
5 Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558,  
6 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, the California Business and Professions  
7 Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

8 6. Plaintiff reserves the right to name additional representatives.

9 **II. PARTIES**

10 **A. Plaintiff**

11 7. Plaintiff is a former employee of Defendants, who, at all relevant times, was employed as  
12 a janitor and worked for Defendants in a non-exempt position in San Diego County.

13 8. Plaintiff is a resident of the State of California and currently resides in San Diego County.

14 9. At all relevant times, Plaintiff and, on information and belief, other similarly situated  
15 employees of Defendants in California were subject to the same policies, practices, and procedures  
16 governing their employment and their payment of wages and hours worked.

17 **B. Defendants**

18 10. Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. is a California company  
19 with its principal place of business in San Diego, California, operating and doing business in the state of  
20 California, including San Diego County, California.

21 11. Defendants’ wrongful conduct, as alleged herein, occurred in the County of San Diego and  
22 in the State of California.

23 12. Plaintiff is informed and believes, and thereon alleges, that each Defendants, whether  
24 named or fictitious, is and, at all relevant times, was authorized to do business and did business in the  
25 State of California and was Plaintiff’s and other similarly situated employees’ “employer” as defined in  
26 and subject to the California Labor Code and the applicable IWC Wage Order.

27 13. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.  
28 The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently

1 unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of  
2 the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed  
3 and believes, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged  
4 in this Complaint.

5 14. Plaintiff and all other similarly situated employees are, and at all relevant times were, non-  
6 exempt employees of each Defendants, including DOES 1 through 50, within the meanings set forth in  
7 the California Labor Code and applicable IWC Wage Order.

8 15. Plaintiff is informed and believes that at all relevant times, each Defendants, whether  
9 named or fictitious, was the agent, employee or other person acting on behalf of every other Defendants,  
10 and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or  
11 employment and ratified the acts of each other Defendant.

12 16. Plaintiff is informed and believes that at all relevant times, each Defendants, whether  
13 named or fictitious, exercised control over Plaintiff's and other similarly situated employees' wages, hours  
14 and/or working conditions.

15 17. Plaintiff is further informed and believes that at all relevant times, each Defendants,  
16 whether named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme,  
17 business plan or policy, and the acts of each Defendants are legally attributable to the other Defendants.

18 18. Each Defendants, whether named or fictitious, was the alter ego of each of the other  
19 Defendants at all relevant times herein.

20 19. A unity of interest and ownership between each Defendants, whether named or fictitious,  
21 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated  
22 employees.

23 **III. JURISDICTION AND VENUE**

24 20. This Court has subject-matter jurisdiction to hear this case because Plaintiff is informed  
25 and believes that the monetary damages and restitution sought herein for Defendants' conduct exceeds the  
26 minimum jurisdictional limits of the Superior Court.

27 21. Venue is proper in San Diego County pursuant to Code of Civil Procedure §§ 395(a) and  
28 395.5 because Defendants maintain offices and transact substantial business in San Diego County,

1 Defendants employed Plaintiff and other similarly situated employees in San Diego County, and the  
2 unlawful acts alleged herein that arose in San Diego County have a direct effect on Plaintiff and other  
3 similarly situated employees within San Diego County.

4 **IV. GENERAL ALLEGATIONS**

5 22. Plaintiff is a former employee of Defendants who worked as a day porter/glass washer from  
6 approximately January 2016 to May 2017. Plaintiff was assigned and placed to work at Ambrix, Inc. in  
7 La Jolla, California.

8 23. As a day porter/glass washer, Plaintiff was responsible for lab operations, lab maintenance,  
9 facilities operations, and facilities maintenance.

10 24. At all times, Plaintiff was a non-exempt employee and was compensated on an hourly  
11 basis. Plaintiff initially earned \$11.50 per hour, and ended his employment earning approximately \$15.00  
12 per hour.

13 25. Defendants denied Plaintiff and, on information and belief, other similarly situated current  
14 and former non-exempt employees, certain rights afforded to them under the California Labor Code and  
15 IWC Wage Order. Specifically, Defendants did not properly compensate Plaintiff and other similarly  
16 situated current and former non-exempt employees for all hours worked, failed to provide compliant meal  
17 and rest periods, failed to indemnify all necessary business expenses, failed to provide accurate itemized  
18 wage statements, and failed to pay all wages due and owing by the times set forth by law.

19 26. Plaintiff and, on information and belief, other similarly situated employees of Defendants  
20 did not sign a valid on-duty meal period agreement at any point during their employment with Defendants,  
21 nor did they properly waive any of their meal periods.

22 27. Defendants did not have a written meal break policy that complied with California law.

23 28. Defendants had a pattern and practice of not providing Plaintiff and, on information and  
24 belief, other similarly situated employees with legally compliant meal periods, even though Plaintiff and  
25 other similarly situated employees worked more than six (6) hours during their workday.

26 29. Pursuant to Defendants' policies and procedures, Defendants did not provide Plaintiff and,  
27 on information and belief, other similarly situated employees the opportunity to take compliant 30-minute,  
28 off-duty meal periods before the end of the fifth hour of work. Instead, Defendants expected Plaintiff and,

1 on information and belief, other similarly situated employees to work through meal periods. In addition,  
2 Plaintiff was always the only day porter on duty, and therefore was not relieved of all duties and afforded  
3 the opportunity to take 30-minute, off-duty meal periods before the start of his sixth hour of work.

4 30. Upon information and belief, Defendants employed the use of an auto-deduct system,  
5 thereby automatically deducting 30 minutes of time for an uncompensated meal period even though  
6 Plaintiff and, on information and belief, other similarly situated employees, were not provided meal  
7 periods.

8 31. As a result, Plaintiff and, on information and belief, other similarly situated employees  
9 were regularly required to work through their meal periods, take a meal period more than five hours after  
10 they started working, take a meal period that was less than thirty minutes long, or did not receive a meal  
11 period at all.

12 32. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and belief,  
13 other similarly situated employees were denied the opportunity to take legally compliant thirty-minute  
14 meal periods, in violation of the applicable Wage Order.

15 33. Defendants did not have a written rest break policy that complied with California law.

16 34. For the same reasons Defendants did not authorize or permit Plaintiff and, on information  
17 and belief, other similarly situated employees to take legally compliant meal periods, Defendants also had  
18 a pattern and practice of failing to authorize and permit Plaintiff and, on information and belief, other  
19 similarly situated employees to take legally compliant rest periods of at least 10 minutes for every four-  
20 hour work period, or major fraction thereof.

21 35. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and belief,  
22 other similarly situated employees were not authorized or permitted to take legally compliant rest periods,  
23 in violation of the applicable Wage Order.

24 36. Although Plaintiff and, on information and belief, other similarly situated employees' meal  
25 and rest periods were regularly late, short, interrupted, or not provided at all, Defendants did not  
26 compensate Plaintiff and, on information and belief, other similarly situated employees an additional hour  
27 of pay at their regular rate of pay for the times that Plaintiff and other similarly situated employees were  
28 not authorized or permitted to take a compliant and timely meal or rest period, in violation of Labor Code

1 § 226.7.

2 37. Plaintiff and, on information and belief, other similarly situated employees regularly  
3 worked more than eight hours a day and/or more than forty hours a week.

4 38. Defendants failed to properly pay Plaintiff and, on information and belief, other similarly  
5 situated employees at least minimum, regular and overtime wages owed for all time suffered or permitted  
6 to work through and during their meal periods and rest periods. Despite the fact that all time spent  
7 performing these duties was compensable work hours, Defendant did not count this time as hours worked  
8 and provided no remuneration.

9 39. Furthermore, Plaintiff and, on information and belief, other similarly situated employees  
10 were not paid all minimum, regular, and overtime wages because Defendants failed to pay them for various  
11 tasks that they performed while they were off-duty. For example, Defendants required Plaintiff to be on  
12 call and to report back to work when an alarm went off in his department and was not compensated for  
13 his time responding to the call.

14 40. Defendants failed to pay Plaintiff and, on information and belief, other similarly situated  
15 employees reporting time pay for being on-call. For example, after Plaintiff's scheduled shift ended,  
16 Defendants required Plaintiff to remain on call and respond to any calls from Ambrix. As a result, Plaintiff  
17 and, on information and belief, other similarly situated employees were required to make time available  
18 for Defendants and refrain from making other arrangements or plans for the day, but were not paid any  
19 amount for this on-call time.

20 41. Defendants failed to indemnify Plaintiff and, on information and belief, other similarly  
21 situated employees for all necessary expenses that were incurred in the discharge of their job duties. For  
22 example, Plaintiff and, on information and belief, other similarly situated employees were required to use  
23 their personal cell phones to communicate with their supervisors, clients, and vendors. In addition,  
24 Plaintiff and, on information and belief, other similarly situated employees were required to use their  
25 personal vehicles to travel between different job sites. Plaintiff and, on information and belief, other  
26 similarly situated employees did not receive any reimbursement for the use of their personal cell phones  
27 or vehicles, as required by California law.

28 ///

1           42. As a direct result of Defendants’ illegal policies and procedures, Defendants failed to  
2 maintain accurate records reflecting all of Plaintiff’s and, on information and belief, other similarly  
3 situated employees’ time worked and wages earned, in violation of California law. On information and  
4 belief, Defendants failed to keep accurate records of Plaintiff’s and other similarly situated employees’  
5 hours worked when Defendants failed to record the proper beginning and ending of each work and meal  
6 period, in addition to the total hours worked during the pay period, among others.

7           43. Defendants similarly failed to provide Plaintiff and, upon information and belief, other  
8 similarly situated employees with accurate itemized wage statements. For example, the wage statements  
9 issued by Defendants do not include the accurate total regular and overtime hours worked, the accurate  
10 hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross  
11 and net wages earned. The wage statements issued by Defendants also do not accurately set forth the hours  
12 worked during meal breaks and their correct corresponding rates of pay.

13           44. On information and belief, the wage statement omissions and inaccuracies were not a result  
14 of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing  
15 and intentional omissions by Defendants. In addition, and as a result of these omissions and inaccuracies,  
16 Plaintiff and, on information and belief, other similarly situated employees were not promptly and easily  
17 able to determine the correct hours worked and/or determine the accurate wages due and owing without  
18 reference to other documents and information.

19           45. To this date, Defendants have not paid Plaintiff and, on information and belief, other  
20 similarly situated employees all wages owed, including all minimum, regular and overtime wages, and  
21 meal and rest period premium wages.

22           46. Defendants maintained a pattern and practice of failing to pay Plaintiff and, on information  
23 and belief, other similarly situated employees all wages due and owing at the time of their separation of  
24 employment within the time specified by Labor Code §§ 201 and 202 because Defendants failed to pay  
25 Plaintiff and, on information and belief, other similarly situated employees all wages due and owing at the  
26 time of termination of their employment.

27           47. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order,  
28 Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an



1 employment pattern and practice that violated Business & Professions Code § 17200 *et seq.* Plaintiff and,  
2 on information and belief, other similarly situated employees suffered damages due to Defendants’ unfair,  
3 unlawful and/or fraudulent actions.

4 **V. CLASS ACTION DESIGNATION**

5 48. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
6 paragraphs above, as though fully set forth herein.

7 49. Plaintiff brings Causes of Action One through Nine as a Class Action pursuant to California  
8 Code of Civil Procedure § 382 on behalf of himself and all current and former employees of Defendants  
9 in California and who worked as a non-exempt employee and who were affected by Defendants’ Labor  
10 Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

11 50. Plaintiff seeks to represent the following Classes, which are defined as:

12 **The Non-Exempt Class:**

13 “All current and former non-exempt employees of Defendant  
14 PROFESSIONAL MAINTENANCE SYSTEMS, INC. who were  
15 employed at any time from 4 years from the date of filing of this Complaint  
16 through the present”

17 51. Plaintiff also seeks to represent the following Subclass, which is defined as:

18 **The Waiting Time Penalties Subclass:**

19 “All members of the Non-Exempt Class, whose employment with  
20 Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. ended at  
21 any time from 3 years from the date of filing of this Complaint through the  
22 present.”

23 52. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves  
24 the right to amend or modify the class definitions with greater specificity, by further division into  
25 subclasses, and/or limitation to particular issues.

26 53. Causes of Action One through Nine are appropriately suited for a class action pursuant to  
27 § 382 of the Code of Civil Procedure because the following requirements are met:

28 ///

1 **A. Numerosity**

2 54. The members of the Classes are sufficiently numerous to render the joinder of all their  
3 members impracticable. While Plaintiff has not yet determined the precise number of members of the  
4 Classes, Plaintiff is informed and believes that the Classes likely consist of over 100 individuals. Although  
5 the exact number is currently unknown to Plaintiff, this information is easily ascertainable from  
6 Defendants' time and payroll records and other personnel records.

7 **B. Commonality and Predominance**

8 55. Common questions of law and fact exist as to all class members and predominate over any  
9 questions affecting only individual members of the Class or Subclass. The common questions of law and  
10 fact that predominate include, but are not limited to:

- 11 a. Whether Defendants failed to permit Non-Exempt Class members to uninterrupted  
12 and duty-free, thirty-minute meal periods before the commencement of the sixth  
13 hour of work;
- 14 b. Whether Defendants failed to permit Non-Exempt Class members to take off-duty  
15 rest periods of at least 10 minutes for every four hours worked, or major fraction  
16 thereof;
- 17 c. Whether Defendants failed to pay one additional hour of pay at the employees'  
18 regular rate of compensation to Non-Exempt Class members when they were not  
19 provided with compliant and timely meal and rest periods;
- 20 d. Whether Defendants failed to pay Non-Exempt Class members at least minimum  
21 wages and/or all regular wages owed for all hours or fractions of an hour worked  
22 and under the control of Defendants;
- 23 e. Whether Defendants failed to pay Non-Exempt Class members all overtime wages  
24 for all hours, or fraction of hours, worked and under the control of Defendants;
- 25 f. Whether Defendants failed to pay Non-Exempt Class members reporting time pay  
26 for working on-call shifts;
- 27 g. Whether Defendants failed to indemnify Non-Exempt Class members for necessary  
28 business expenses incurred in direct consequence of the discharge of their duties;

- 1 h. Whether Defendants failed to properly and accurately record and maintain records  
2 of all hours worked and wages earned by Non-Exempt Class members;
- 3 i. Whether Defendants failed to provide Non-Exempt Class members with accurate  
4 itemized wage statements showing, among other things, the number of hours  
5 worked and the correct amount of gross and net wages earned; and
- 6 j. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of  
7 their wages owed within the required time frames upon separation of employment.

8 **C. Typicality**

9 56. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all  
10 class members' claims arise from the same event, practice and/or course of conduct of Defendants.  
11 Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies,  
12 practices and/or common course of conduct in violation of California wage and hour laws and/or illegal,  
13 unfair, or fraudulent business practices.

14 57. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order  
15 are typical of the Class and Subclass because Defendants' failure to comply with the provisions of  
16 California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and  
17 other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies  
18 sought by Plaintiff and all class members are the same.

19 **D. Adequacy of Representation**

20 58. Plaintiff has no fundamental conflict of interest with the Class or Subclass he seeks to  
21 represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's  
22 best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him  
23 and putative class members.

24 59. Plaintiff retained attorneys who are experienced employment law litigators with significant  
25 wage and hour and class action experience.

26 **E. Superiority of Class Action**

27 60. Plaintiff believes a class action is a superior method of litigation for the fair and efficient  
28 adjudication of this controversy. Individual joinder of all class members is not practicable. Class action

1 treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient  
2 and economical for the parties and the judicial system.

3 61. Plaintiff knows of no difficulty that might be encountered in the management of this suit,  
4 which would preclude maintenance as a class action.

5 **VI. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 (Violation of Labor Code §§ 226.7, 512, and 1198 and the “Meal Periods” section of the  
9 Applicable IWC Wage Order)

10 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

11 62. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
12 paragraphs above, as though fully set forth herein.

13 63. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not  
14 employ an employee for a work period of more than five hours per day without providing an employee  
15 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of  
16 more than 10 hours per day without providing the employee with a second meal period of not less than 30  
17 minutes.”

18 64. Labor Code § 226.7 requires that employers, including Defendants, provide their  
19 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare  
20 Commission, and prohibits employers from requiring any employee “to work during any meal ... period  
21 mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states,  
22 “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the  
23 employer shall pay the employee one additional hour of pay at the employee’s regular rate of  
24 compensation for each workday that the meal ... period is not provided.”

25 65. Labor Code § 1198 states that the “maximum hours of work and standard conditions of  
26 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
27 for employees. The employment of any employee for longer hours than those fixed by the order or under  
28 conditions of labor prohibited by the order is unlawful.”

1           66.     The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall  
2 employ any person for a work period of more than five (5) hours without a meal period of not less than  
3 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work  
4 the meal period may be waived by mutual consent of the employer and the employee.” It further states,  
5 “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without  
6 providing the employee with a second meal period of not less than 30 minutes, except that if the total  
7 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of  
8 employer and employee only if the first meal period was not waived.”

9           67.     The “Meal Periods” section of the applicable IWC Wage Order further states, “[u]nless the  
10 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an  
11 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only  
12 when the nature of the work prevents an employee from being relieved of all duty and when by written  
13 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state  
14 that the employee may, in writing, revoke the agreement at any time.”

15           68.     The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an  
16 employer fails to provide an employee a meal period in accordance with the applicable provisions of this  
17 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of  
18 compensation for each workday that the meal period is not provided.”

19           69.     On information and belief, Plaintiff and the Non-Exempt Class were subject to the same  
20 policies, practices, and procedures governing the provision and scheduling of meal periods.

21           70.     On information and belief, Defendants had a pattern and practice of not providing Plaintiff  
22 and the Non-Exempt Class with legally compliant 30-minute off-duty meal periods during their shifts,  
23 even though they worked more than six (6) hours during their workday.

24           71.     Plaintiff and, on information and belief, the Non-Exempt Class were unable to take  
25 compliant meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’  
26 illegal policies required Plaintiff and, on information and belief, the Non-Exempt Class to remain on duty  
27 at all times during their meal periods, or not take them at all.

28 ///

1 72. Thus, as a result of Defendants’ policies, Plaintiff’s and Non-Exempt Class members’ meal  
2 periods were regularly on-duty or not taken.

3 73. Plaintiff and, on information and belief, the Non-Exempt Class members did not sign a  
4 valid on-duty meal period agreement at any point during their employment with Defendant.

5 74. Therefore, as a result of Defendants’ conduct, including the conduct alleged herein,  
6 Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order  
7 when Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free  
8 meal period before the commencement of their sixth hour of work.

9 75. Consequently, pursuant to Labor Code § 226.7(b) and the “Meal Periods” section of the  
10 Wage Order, Defendants was required to pay Plaintiff and the Non-Exempt Class one additional hour of  
11 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the  
12 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour  
13 of work.

14 76. Despite this obligation, Defendants did not pay Plaintiff and, on information and belief, the  
15 Non-Exempt Class one additional hour of pay at each employee’s regular rate of compensation for each  
16 day that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal  
17 period before the commencement of their sixth hour of work.

18 77. Instead, on information and belief, Defendants had a common policy and practice of failing  
19 to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay for the  
20 times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free  
21 meal period before the commencement of their sixth hour of work, as required by Labor Code § 226.7(b)  
22 and the IWC Wage Order.

23 78. Thus, on information and belief, Defendants intentionally refused to perform their  
24 obligations to provide meal periods and further failed to compensate Plaintiff and the Non-Exempt Class  
25 with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

26 79. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to  
27 Defendants’ failure to pay an additional hour of pay for each day a legally compliant meal period was not  
28 provided and the associated use and enjoyment of compensation due and owing to them as a direct result

1 of Defendants’ Labor Code and IWC Wage Order violations.

2 80. Plaintiff seeks all available remedies for Defendants’ violations, including, but not limited  
3 to, all wages due, monies, and interest to the extent permitted by law.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 (Violation of Labor Code §§ 226.7 and 1198 and the “Rest Periods” section  
8 of the Applicable IWC Wage Order)

9 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

10 81. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
11 paragraphs above, as though fully set forth herein.

12 82. Labor Code § 226.7 requires employers, including Defendants, to provide to their  
13 employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

14 83. Labor Code § 1198 states that the “maximum hours of work and standard conditions of  
15 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
16 for employees. The employment of any employee for longer hours than those fixed by the order or under  
17 conditions of labor prohibited by the order is unlawful.”

18 84. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer  
19 shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the  
20 middle of each work period. The authorized rest period time shall be based on the total hours worked daily  
21 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore,  
22 “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions  
23 of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of  
24 compensation for each workday that the rest period is not provided.”

25 85. On information and belief, Plaintiff and the Non-Exempt Class are subject to the same  
26 policies, practices, and procedures governing the provision and scheduling of rest periods.

27 86. For the same reasons Defendants did not authorize and permit Plaintiff and, on information  
28 and belief, the Non-Exempt Class members from taking legally compliant meal periods, Plaintiff and, on

1 information and belief, the Non-Exempt Class members were also not authorized and permitted to take  
2 compliant rest periods.

3 87. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ...  
4 period in accordance with a state law... the employer shall pay the employee one additional hour of pay  
5 at the employee’s regular rate of compensation for each workday that the .... rest ... period is not  
6 provided.”

7 88. Even though Plaintiff and, on information and belief, Non-Exempt Class members were  
8 not authorized and permitted to take off-duty rest periods, Defendants did not pay Plaintiff and the Non-  
9 Exempt Class appropriate rest period premium wages for each day in which Defendants did not authorize  
10 and permit Plaintiff and the Non-Exempt Class to take compliant rest periods, in violation of Labor Code  
11 § 226.7 and the applicable IWC Wage Order.

12 89. On information and belief, Defendants had a common policy, pattern, and practice of  
13 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay  
14 for the times that Plaintiff and the Non-Exempt Class were not authorized to take rest periods of at least  
15 10 minutes for each four-hour work period, or major fraction thereof.

16 90. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to  
17 Defendants’ failure to pay an additional hour of pay for each day a rest period was not provided and the  
18 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants’  
19 Labor Code and IWC Wage Order violations.

20 91. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited  
21 to, any and all wages due, monies, and interest, to the extent permitted by law.

22 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

25 (Violation of Labor Code §§ 1194, 1197, and 1198 and the “Minimum Wages” section of the  
26 Applicable IWC Wage Order)

27 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against Defendants)

28 92. Plaintiff re-alleges and incorporates by reference the allegations contained in the



1 paragraphs above, as though fully set forth herein.

2 93. Labor Code § 1197 provides, “[t]he minimum wage for employees fixed by the  
3 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
4 minimum wage so fixed is unlawful.”

5 94. The “Minimum Wages” section of the applicable IWC Wage Order provides that an  
6 employer may not pay employees less than the applicable minimum for all hours worked.

7 95. The applicable IWC Wage Order defines the term “hours worked” as “the time during  
8 which an employee is subject to the control of an employer, and includes all the time the employee is  
9 suffered or permitted to work, whether or not required to do so.”

10 96. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the  
11 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
12 standard conditions of labor for employees. The employment of any employee for longer hours than those  
13 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

14 97. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class  
15 members at least minimum wages for all the time spent working and under the control of Defendants.  
16 Even though Plaintiff and, on information and belief, Non-Exempt Class members were required to work  
17 through their meal and rest periods, Defendants did not count this time as hours worked. In addition,  
18 Plaintiff and, on information and belief, Non-Exempt Class members were not paid all minimum and  
19 regular wages because Defendants failed to pay them for various tasks that they performed while they  
20 were off-duty. As a result, Plaintiff and, on information and belief, Non-Exempt Class members did not  
21 receive the statutory minimum wage for all time suffered or permitted to work because they were not  
22 properly compensated at their regular rate of pay for the time they spent working through their meal and  
23 rest periods and while they were off-duty.

24 98. Labor Code § 1194 provides, in part, that any employee receiving less than the legal  
25 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including  
26 interest thereon, reasonable attorney’s fees, and costs of suit.

27 99. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount  
28 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

1 100. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use  
2 and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and  
3 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional  
4 limitations of this Court.

5 101. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited  
6 to, any and all wages due, monies, interest, liquidated damages, attorney’s fees, and costs to the extent  
7 permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 (Violation of Labor Code §§ 510, 1194, and 1198, and the “Hours and Days of Work” section of the  
12 Applicable IWC Wage Order)

13 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

14 102. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
15 paragraphs above, as though fully set forth herein.

16 103. Labor Code § 510 provides, “[a]ny work in excess of eight hours in one workday and any  
17 work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of  
18 work in any one workweek shall be compensated at the rate of no less than one and one-half times the  
19 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at  
20 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of  
21 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the  
22 regular rate of pay of an employee.” The “Hours and Days of Work” section of the applicable IWC Wage  
23 Order mandate the same requirements.

24 104. Labor Code § 1194 provides that any employee receiving less than the legal overtime  
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the  
26 full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and  
27 costs of suit.

28 ///

1 105. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the  
2 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
3 standard conditions of labor for employees. The employment of any employee for longer hours than those  
4 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

5 106. The applicable IWC Wage Order defines the term “hours worked” as “the time during  
6 which an employee is subject to the control of an employer, and includes all the time the employee is  
7 suffered or permitted to work, whether or not required to do so.”

8 107. For the same reasons Defendants failed to pay Plaintiff and, on information and belief,  
9 Non-Exempt Class members for all minimum and regular wages, Defendants also failed to pay Plaintiff  
10 and, on information and belief, Non-Exempt Class members overtime wages for all hours they worked  
11 over eight in a day and/or forty in a week, and/or for every hour worked during the seventh day of work,  
12 at the applicable overtime rate during their employment with Defendants.

13 108. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use  
14 and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and  
15 Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional  
16 limitations of this Court.

17 109. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited  
18 to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

19 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PAY REPORTING TIME PAY**

22 (Violation of Labor Code § 1199, and the “Reporting Time Pay” section of the Applicable IWC Wage  
23 Order)

24 (Alleged By Plaintiff Individually and on Behalf of the Non-Exempt Class Against Defendants)

25 110. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
26 paragraphs above, as though fully set forth herein.

27 111. The “Reporting Time Pay” section of the applicable IWC Wage Order states, “[e]ach  
28 workday an employee is required to report for work and does report, but is not put to work or is furnished

1 less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual  
2 or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the  
3 employee’s regular rate of pay, which shall not be less than the minimum wage.”

4 112. Labor Code § 1199 makes it unlawful for any employer “or other person acting either  
5 individually or as an officer, agent, or employee of another person” to require or cause “any employee to  
6 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the  
7 commission,” pay or cause “to be paid to any employee a wage less than the minimum fixed by an order  
8 of the commission” or violate or refuse or neglect “to comply with any provision of this chapter or any  
9 order or ruling of the commission.”

10 113. In *Ward v. Tilly’s, Inc.*, No. B280151, 2019 WL 421743 (Cal. Ct. App., Feb. 4, 2019), the  
11 California Court of Appeal held that similar on-call shifts trigger the Wage Order’s reporting time pay  
12 requirements. The court noted, “on-call shifts burden employees, who cannot take other jobs, go to school,  
13 or make social plans during on-call shifts—but who nonetheless receive no compensation from [their  
14 employer] unless they ultimately are called in to work. This is precisely the kind of abuse that reporting  
15 time pay was designed to discourage.”

16 114. Defendants established and maintained a policy and practice of scheduling Plaintiff and,  
17 on information and belief, Non-Exempt Class members for on-call shifts. Defendants scheduled Plaintiff  
18 and, on information and belief, Non-Exempt Class members for on-call shifts several days per week and  
19 expected them to be available and respond to any calls or emergencies.

20 115. Therefore, Plaintiff and, on information and belief, Non-Exempt Class members were  
21 required to wait for Defendants to contact them and were unable to make other plans or arrangements for  
22 the day. Over the course of their employment, Plaintiff and, on information and belief, Non-Exempt Class  
23 members were not paid any amount for this on-call time.

24 116. As a direct and proximate result of Defendants’ actions set forth herein, Plaintiff and, on  
25 information and belief, Non-Exempt Class members have been damaged in that they have not been paid  
26 all required reporting time pay.

27 117. Plaintiff and Non-Exempt Class are entitled to recover the premium wages prescribed by  
28 the “Reporting Time Pay” section of the applicable IWC Wage Order in an amount of no less than two

1 hours, nor greater than four, whichever is greater, for each such occurrence, for every non-exempt  
2 employee.

3 118. Plaintiff seeks all available remedies for Defendants' violations including, but not limited  
4 to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted by law.

5 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

8 (Violation of Labor Code § 2802)

9 (Alleged By Plaintiff Individually and on Behalf of the Non-Exempt Class Against Defendants)

10 119. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
11 paragraphs above, as though fully set forth herein.

12 120. Labor Code § 2802 requires an employer to indemnify its employees for all necessary  
13 expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties  
14 of employment.

15 121. Labor Code § 2802(b) states, "[a]ll awards made by a court ... for reimbursement of  
16 necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest  
17 will accrue from the date on which the employee incurred the necessary expenditure including, but not  
18 limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted  
19 pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount  
20 to be proven at time of trial.

21 122. Furthermore, Labor Code § 2802(c) states, "[f]or the purposes of this section, the term  
22 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,  
23 attorney's fees incurred by the employee enforcing the rights granted by this section."

24 123. Plaintiff and, on information and belief, members of the Non-Exempt Class incurred  
25 business expenses in direct consequence of their job duties through the use of their personal vehicles and  
26 cell phones.

27 124. On information and belief, Plaintiff and the Non-Exempt Class were required to use their  
28 personal vehicles to drive from location to location and their personal cell phones to communicate with

1 Defendants about their duties and to provide updates. Despite Defendants’ knowledge that Plaintiff and,  
2 on information and belief, Non-Exempt Class members were using their personal vehicles and cell phones  
3 for work related purposes, Defendants failed to reimburse them for these expenses in violation of Labor  
4 Code § 2802.

5 125. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the  
6 Non-Exempt Class suffered and continue to suffer, substantial losses related to Defendants’ failure to  
7 indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest  
8 on such monies and expenses, and attorney’s fees and costs in seeking to compel Defendants to fully  
9 perform its obligations under state law, all to their respective damage in amounts according to proof at  
10 trial and within the jurisdictional limitations of this Court.

11 126. Plaintiff seeks to recover in a civil action to the fullest extent permissible all available  
12 remedies including but not limited to the unpaid balance of the indemnification from Defendants’  
13 violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney’s fees and costs of  
14 suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor  
15 Code § 2802 and Code of Civil Procedure § 1021.5. The exact amount of reimbursements, interest, costs  
16 and attorney’s fees will be in an amount to be proved at time of trial.

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **SIXTH CAUSE OF ACTION**

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

20 (Violation of Labor Code §§ 226, 246, and 1198 and the “Records” section of the  
21 Applicable IWC Wage Order)

22 (Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

23 127. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
24 paragraphs above, as though fully set forth herein.

25 128. Labor Code § 226(a) requires that employers, including Defendants, furnish their  
26 employees with each wage payment an accurate and itemized writing that shows gross wages earned, total  
27 hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee  
28 is paid, the name of the employee and the portion of his or her social security number, the name and

1 address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay  
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 129. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of  
4 all actual damages or the amount specified in Labor Code § 226 per violation.

5 130. Labor Code § 226(e)(2)(B) states, in pertinent part, “an employee is deemed to suffer injury  
6 for purposes of this subdivision if the employer fails to provide accurate and complete information as  
7 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot  
8 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount  
9 of the gross wages or net wages paid to the employee during the pay period or any of the other information  
10 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)  
11 of subdivision (a).”

12 131. Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to  
13 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

14 132. As a direct result of Defendants’ illegal policies and procedures, Defendants’ failed to  
15 maintain accurate records reflecting all of Plaintiff’s and, on information and belief, other similarly  
16 situated employees’ time worked and wages paid, in violation of California law. In addition, the wage  
17 statements issued by Defendants did not include the correct total regular and overtime hours worked, the  
18 correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding  
19 number of hours worked at each hourly rate, as required under Labor Code § 226(a).

20 133. Defendants’ failure to provide accurate wage statements deprived Plaintiff and members  
21 of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and  
22 rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Non-  
23 Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all  
24 of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the  
25 Non-Exempt Class suffered actual damages as a result.

26 134. Defendants’ failure to provide accurate itemized wage statements constitutes an injury as  
27 defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class  
28 have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all

1 actual damages or the amount specified in § 226 per violation.

2 135. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses  
3 and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such  
4 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their  
5 obligations, in an amount to be shown according to proof at trial.

6 136. Plaintiff seeks to recover all available remedies including, but not limited to damages,  
7 penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

11 (Violations of Labor Code §§ 201, 202, 203)

12 (Alleged By Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass

13 Against Defendants)

14 137. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
15 paragraphs above, as though fully set forth herein.

16 138. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement  
17 or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and  
18 all wages due and owing to an employee not having a written contract for a definite period, who quits his  
19 or her employment, within 72 hours of the employee quitting his or her employment, unless the employee  
20 has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled  
21 to his or her wages at the time of quitting.

22 139. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages  
23 of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an  
24 action is commenced, but the wages shall not continue for more than 30 days.

25 140. As a result of Defendants' conduct during the applicable statutory period, Defendants  
26 willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all  
27 wages due and owing to them, including minimum wages, overtime wages, and regular wages for all the  
28 time they were suffered or permitted to work or were engaged in work under Defendants' control, as well



1 as all meal period premiums and rest period premiums owed within the time required by Labor Code §§  
2 201 and 202, as applicable.

3 141. To date, Plaintiff has not yet received all wages due and payable, including but not limited  
4 to, minimum wages, overtime wages, regular wages, and meal and rest period premium wages owing to  
5 him. On information and belief, members of the Waiting Time Penalties Subclass have not yet received  
6 all minimum wages, overtime wages, regular wages, and meal and rest premium wages due and owing to  
7 them.

8 142. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time  
9 Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of  
10 wages due and owing to them, all to their respective damage in an amount to be shown according to proof  
11 at trial and within the jurisdictional limitations of this Court.

12 143. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent  
13 permissible.

14 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

15 **NINTH CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

17 (Alleged By Plaintiff Individually and on Behalf of the Non-Exempt Class Against Defendants)

18 144. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
19 paragraphs above, as though fully set forth herein.

20 145. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair  
21 competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

22 146. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute  
23 "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and  
24 Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal  
25 periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal  
26 periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium  
27 wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiff and the Non-Exempt Class  
28 all regular, minimum, and overtime wages for all hours suffered or permitted to work and under the control

1 of Defendant; (iv) failure to pay Plaintiff and the Non-Exempt Class reporting time pay; (v) failure to  
2 indemnify Plaintiff and the Non-Exempt Class for necessary business expenses; (v) failure to maintain  
3 accurate records of the hours that Plaintiff and the Non-Exempt Class worked while employed by  
4 Defendant; (vi) failure to provide Plaintiff and the Non-Exempt Class with accurate itemized wage  
5 statements; and (vii) failure to timely pay Plaintiff and members of the Waiting Time Penalties Subclass  
6 all wages owed upon separation of their employment with Defendants.

7 147. Defendants intentionally avoided paying Plaintiff and the Non-Exempt Class all wages  
8 and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially  
9 lower cost of doing business, and thus, undercut its competitors.

10 148. Defendants lowered their costs of doing business by paying Plaintiff and the Non-Exempt  
11 Class an amount less than what is required by the California Labor Code and the applicable Wage Order  
12 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and Non-Exempt Class members  
13 to perform work without fair compensation and benefits.

14 149. Defendants held themselves out to Plaintiff and the Non-Exempt Class as being  
15 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.  
16 Plaintiff and the Non-Exempt Class relied on and believed in Defendants' representation concerning  
17 Defendants' adherence to the California laws, all to their detriment.

18 150. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding  
19 money owed to the class and withholding wages, compensation and benefits, which are all the property  
20 of Plaintiff and the Non-Exempt Class, in violation of the California Labor Code and the IWC Wage  
21 Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under  
22 California Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition,  
23 Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

24 151. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief  
25 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost  
26 money or property as a result of the unfair competition."

27 152. Defendants acquired money and property owed to Plaintiff and the Non-Exempt Class by  
28 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions

1 Code § 17200, *et seq.*

2 153. Plaintiff and the Non-Exempt Class are persons in interest under Business and Professions  
3 Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203  
4 states, in relevant part, that “any person may pursue representative claims or relief on behalf of others only  
5 if the claimant meets the standing requirements of Section 17204.”

6 154. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and  
7 benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code  
8 §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the  
9 putative classes.

10 155. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or  
11 judgments, as may be necessary to restore to any person in interest any money or property, real or personal,  
12 which may have been acquired by means of such unfair competition.”

13 156. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the  
14 Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make  
15 restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203,  
16 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

17 157. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and  
18 monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

19 158. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt  
20 Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be  
21 shown according to proof at trial. All such remedies are cumulative of relief available under other laws,  
22 pursuant to Business & Professions Code § 17205.

23 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 26 a. For general damages;
- 27 b. For special damages;
- 28 c. For an award of liquidated damages to the extent permissible by Labor Code §

1 1194.2;

- 2 d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by  
3 law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5,  
4 218.6, 226, 248.5, 1194, and 2802;
- 5 e. For civil and statutory penalties to the extent permitted by law, including those  
6 pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- 7 f. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- 8 g. For an order requiring Defendants to restore and disgorge all funds to each affected  
9 person acquired by means of any act or practice declared by this Court to be  
10 unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under  
11 Business and Professions Code § 17200, *et seq.*;
- 12 h. For an award of damages in the amount of unpaid compensation and monies  
13 including, but not limited to actual damages, unpaid wages, minimum wages,  
14 regular wages, overtime wages, waiting time penalties and other penalties  
15 according to proof, including interest thereon, to the extent permissible by law;
- 16 i. For an award of an additional hour of pay at the regular rate of compensation for  
17 each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the  
18 applicable Order of the Industrial Welfare Commission;
- 19 j. For an award of the greater of actual damages or the liquidated damage amounts  
20 provided by Labor Code § 226(e) for Defendants' failure to provide accurate  
21 itemized wage statements, pursuant to Labor Code § 226(a);
- 22 k. For civil penalties for each initial and subsequent violation for each underpaid  
23 employee for each pay period for which the employee was underpaid in addition to  
24 an amount sufficient to recover the underpaid wages pursuant to Labor Code §§  
25 558 and 1197.1;
- 26 l. For injunctive relief as provided by the Labor Code including but not limited to  
27 Labor Code §§ 226(h) and 248.5, and Business and Professions Code § 17200, *et*  
28 *seq.*


- 1 m. For indemnification of all losses incurred as a result of employment with  
2 Defendants, with interest;
- 3 n. For pre- and post-judgment interest to the extent permitted by law including, but  
4 not limited to, Labor Code §§ 218.6 and 1194;
- 5 o. For an order imposing a constructive trust upon Defendants to compel it to transfer  
6 wages that have been wrongfully obtained and held by Defendants to unpaid  
7 employees;
- 8 p. For an accounting to determine all money wrongfully obtained and held by  
9 Defendants;
- 10 q. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 203,  
11 204, 221, 223, 224, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802, as  
12 well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Reporting  
13 Time Pay,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the  
14 Industrial Welfare Commission; and
- 15 r. An award of such other and further relief as this Court deems proper and just.

16 **JURY TRIAL DEMAND**

17 Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

18  
19 Dated: August 29, 2019

GRAHAMHOLLIS APC

20  
21 By:   
22 GRAHAM S.P. HOLLIS  
23 HALI M. ANDERSON  
24 Attorneys for Plaintiff  
25  
26  
27  
28