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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 TOMMY CARRILLO, individually and on
12 behalf of others similarly situated, and as an
13 aggrieved employee and Private Attorney
General,

14 Plaintiff,

15 vs.

16 WEARTECH INTERNATIONAL, INC., a
17 California corporation; THE LINCOLN
ELECTRIC COMPANY, an Ohio
18 corporation; LINCOLN ELECTRIC
HOLDINGS, INC., an Ohio Corporation;
19 and DOES 1 through 50, inclusive,

20 Defendants.

Case No.: 30-2020-01151333-CU-OE-CXC

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

DEMAND FOR TRIAL BY JURY

- (1) **VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (2) **VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND 512(a)
(UNPAID MEAL PERIOD
PREMIUMS)**
- (3) **VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (4) **VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (5) **VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND 203
(FINAL WAGES NOT TIMELY
PAID)**
- (6) **VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE WAGE**

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- STATEMENTS)**
**(7) VIOLATION OF CALIFORNIA
LABOR CODE § 227.3 (UNPAID
VACATION TIME)**
**(8) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.**
**(9) VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS
GENERAL ACT)**

1 Plaintiff Tommy Carrillo (“Plaintiff”) individually and on behalf of other members of the
2 general public similarly situated, and as a private attorney general, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. Plaintiff brings this action against Defendants WEARTECH INTERNATIONAL,
5 INC., THE LINCOLN ELECTRIC COMPANY, LINCOLN ELECTIRC HOLDINGS, INC., and
6 DOES 1 THROUGH 50 (hereinafter also collectively referred to as “Defendants”) for California
7 Labor Code violations, unfair business practices, and civil penalties stemming from Defendants’
8 failure to pay overtime compensation, failure to provide meal periods, failure to authorize and
9 permit rest periods, failure to pay minimum wage, failure to timely pay wages, failure to provide
10 accurate wage statements, failure to maintain accurate time and payroll records, and failure to pay
11 accrued but unused vacation time.

12 2. Plaintiff’s First through Eighth Causes of Action are brought as a class action on
13 behalf of himself and similarly situated current and former employees of Defendants (hereinafter
14 collectively referred to as the “Class” or “Class Members”, as defined more fully in paragraph
15 14, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
16 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
17 and will be established according to proof at trial.

18 3. Plaintiff’s Ninth Cause of Action is brought as a representative action on behalf of
19 himself and certain other current and former employees of Defendants against whom one or more
20 of the alleged violations was committed (hereinafter collectively referred to as the “Aggrieved
21 Employees”) pursuant to California Labor Code sections 2698, et seq. Plaintiff is an aggrieved
22 employee against whom one or more of the alleged violations occurred. The civil penalties sought
23 by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
24 according to proof at trial.

25 4. The Court has jurisdiction over this action pursuant to the California Constitution,
26 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
27 except those given by statute to other courts. The statutes under which this action is brought do
28 not specify any other basis for jurisdiction.

1 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
2 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
3 were proximately caused by its conduct. WEARTECH INTERNATIONAL, INC., THE
4 LINCOLN ELECTRIC COMPANY, LINCOLN ELECTIRC HOLDINGS, INC., and Doe
5 Defendants 1 through 50 are collectively referred to herein as "Defendants."

6 12. Defendants are and at all times herein mentioned were, (a) conducting business in
7 the County of Orange State of California, and (b) the employer of Plaintiff consistent with the
8 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

9 13. Plaintiff further alleges that Defendants, directly or indirectly controlled or
10 affected the working conditions, wages, working hours, and conditions of employment of
11 Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendants
12 employers and employers jointly liable under the statutory provisions set forth herein.

13 **CLASS ACTION ALLEGATIONS**

14 14. Plaintiff brings the First through Eighth Causes of Action as class action on his
15 own behalf and on behalf of all other members of the general public similarly situated, and, thus,
16 seeks class certification under Code of Civil Procedure section 382.

17 15. The proposed class is defined as follows: All current and former non-exempt
18 employees of any of the Defendants within the State of California at any time commencing four
19 (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the certified
20 class action is provided to the class (hereinafter referred to as the "Class" or "Class Members.")

21 16. Plaintiff reserves the right to establish other subclasses as appropriate.

22 17. The Class is ascertainable and there is a well-defined community of interest in the
litigation:

- 23 a. Numerosity: The Class Members are so numerous that joinder of all Class
24 Members is impracticable. The membership of the entire Class is unknown to
25 Plaintiff at this time; however, the Class is estimated to be over fifty (50)
26 individuals and the identity of such membership is readily ascertainable by
27 inspection of Defendants' employment records.

1 b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated
2 herein. Plaintiff will fairly and adequately protect the interests of the other Class
3 Members with whom he has a well-defined community of interest.

4 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
5 Member, with whom he has a well-defined community of interest and typicality
6 of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to
7 the other Class Members. Plaintiff's attorneys, the proposed class counsel, are
8 versed in the rules governing class action discovery, certification, and settlement.
9 Plaintiff has incurred, and during the pendency of this action will continue to
10 incur, costs and attorneys' fees, that have been, are, and will be necessarily
11 expended for the prosecution of this action for the substantial benefit of each Class
12 Member.

13 d. Superiority: A class action is superior to other available methods for the fair and
14 efficient adjudication of this litigation because individual joinder of all Class
15 Members is impractical.

16 e. Public Policy Considerations: Certification of this lawsuit as a class action will
17 advance public policy objectives. Employers of this great state violate
18 employment and labor laws every day. Current employees are often afraid to
19 assert their rights out of fear of direct or indirect retaliation. However, class
20 actions provide the Class Members who are not named in the complaint
21 anonymity that allows for the vindication of their rights.

22 18. There are common questions of law and fact as to the Class that predominate over
23 questions affecting only individual members. The following common questions of law or fact,
24 among others, exist as to the members of the Class:

- 25 a. Whether Defendants' failure to pay wages, without abatement, or reduction, in
26 accordance with the California Labor Code was willful;
- 27 b. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff
28 and the other Class Members for all hours worked, and missed, short, late or

1 interrupted meal periods and rest breaks in violation of California law;

2 c. Whether Defendants required Plaintiff and the other Class Members to work more
3 than eight (8) hours per day and/or more than forty (40) hours per week and failed
4 to pay the legally required overtime compensation to Plaintiff and the other Class
5 Members;

6 d. Whether Defendants deprived Plaintiff and the other Class Members of meal
7 and/or rest periods or required Plaintiff and the other Class Members to work
8 during meal and/or rest periods without compensation;

9 e. Whether Defendants failed to pay meal period premium wages to Class Members
10 when they were not provided with a legally compliant meal period;

11 f. Whether Defendants failed to pay rest period premium wages to class Members
12 when they were not authorized and permitted to take legally compliant rest
13 periods.

14 g. Whether Defendants failed to pay minimum wages to Plaintiff and the other Class
15 Members for all hours worked;

16 h. Whether Defendants failed to pay Plaintiff and the other Class Members the
17 required minimum wage pursuant to California law;

18 i. Whether Defendants failed to pay Plaintiff and the other Class Members proper
19 overtime compensation pursuant to California law;

20 j. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
21 Members within the time required upon their discharge or resignation from
22 employment;

23 k. Whether Defendants failed to pay accrued and unused vacation time in violation
24 of Labor Code section 227.3;

25 l. Whether Defendants complied with wage reporting as required by the California
26 Labor Code, including section 226;

27 m. Whether Defendants' conduct was with malice, fraud or oppression;

28 n. Whether Defendants' conduct was willful or reckless;

1 underpayment of wages to Plaintiff, the Class, and the Aggrieved Employees, including minimum
2 and overtime wages. Defendants also implemented policies that prohibited Plaintiff, the Class,
3 and the Aggrieved Employees from accurately recording the actual time worked, resulting in a
4 failure to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed. In addition,
5 Defendants routinely failed to permit Plaintiff, the Class, and the Aggrieved Employees to take
6 timely and duty-free meal periods and rest periods in violation of California law. Defendants also
7 failed to pay Plaintiff, the Class, and the Aggrieved Employees for all wages owed for accrued
8 vacation time upon termination of employment.

9 25. Throughout the time period involved in this case, Defendants have implemented
10 policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved Employees
11 with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff, the Class,
12 and the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
13 control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods,
14 regularly failed to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable
15 opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff, the Class,
16 and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later
17 than the end of their fifth hour of work and/or from taking a second thirty (30) minute
18 uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten
19 (10) hours. Defendants also failed to maintain accurate records of meal periods taken by Plaintiff,
20 the Class, and the Aggrieved Employees.

21 26. Throughout the time period involved in this case, Defendants did not adequately
22 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal periods under
23 California law. Moreover, Defendants systematically disregarded their own written policies
24 regarding the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved
25 Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff, the Class,
26 and the Aggrieved Employees in a way the prohibited them from taking timely and duty-free meal
27 periods, and to require Plaintiff, the Class, and the Aggrieved Employees to work through their
28 meal periods, for which they were not compensated.

1 27. Throughout the time period involved in this case, Defendants failed to pay
2 Plaintiff, the Class, and the Aggrieved Employees premium wages for meal periods that were
3 missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
4 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all
5 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
6 period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants
7 routinely failed to provide legally compliant meal periods to Plaintiff, the Class, and the
8 Aggrieved Employees, and routinely failed pay one additional hour of pay to Plaintiff, the Class,
9 and the Aggrieved Employees at their regular rate of pay when a meal period was missed, short,
10 late, and/or interrupted.

11 28. Throughout the time period involved in this case, Defendants have implemented
12 policies and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from
13 taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and
14 permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-duty rest
15 periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
16 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to
17 make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each
18 work period.

19 29. Throughout the time period involved in this case, Defendants did not adequately
20 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest periods under
21 California law. Moreover, Defendants systematically disregarded their own written policies
22 regarding the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved
23 Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff, the Class,
24 and the Aggrieved Employees in a way that regularly prohibited them from taking timely and
25 duty free rest periods, and to regularly require Plaintiff, the Class, and the Aggrieved Employees
26 to work through their rest periods.

27 30. Throughout the time period involved in this case, Defendants failed to pay
28 Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that were

1 missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
2 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all
3 rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period
4 was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely
5 failed to authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free
6 rest periods, and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved
7 Employees at their regular rate of pay when a rest period was missed, short, late and/or
8 interrupted.

9 31. Throughout the time period involved in this case, Defendant regularly required
10 Plaintiff, the Class, and the Aggrieved Employees to perform work off-the-clock. Although
11 Defendants prohibited overtime, Defendants still regularly required that Plaintiff, the Class, and
12 the Aggrieved Employees complete all of their assigned duties. To do so, Plaintiff, the Class, and
13 the Aggrieved Employees were regularly required to perform work off-the-clock for which they
14 were not compensated.

15 32. Throughout the time period involved in this case, Defendants employed a time
16 rounding policy that was not neutral and designed to consistently round time in Defendants' favor,
17 ensuring that Plaintiff, the Class, and the Aggrieved Employees were oftentimes not paid for all
18 time worked.

19 33. Throughout the time period involved in this case, Defendants implemented policies
20 that prohibited Plaintiff, the Class, and the Aggrieved Employees from accurately recording the
21 actual time worked, resulting in a failure to pay Plaintiff, the Class, and the Aggrieved Employees
22 all wages owed.

23 34. Throughout the time period involved in this case, Plaintiff, the Class, and the
24 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a
25 week.

26 35. Throughout the time period involved in this case, Defendants regularly failed to
27 pay overtime compensation to Plaintiff, the Class, and the Aggrieved Employees when they
28 worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work

1 week. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
2 Employees were entitled to receive certain wages for overtime compensation and that they were
3 not receiving wages for overtime compensation.

4 36. Throughout the time period involved in this case, Defendants failed to pay
5 overtime to Plaintiff, the Class, and the Aggrieved Employees for all overtime hours worked
6 based on regular rates of pay correctly calculated to include all applicable remuneration, including
7 bonuses.

8 37. Throughout the time period involved in this case, Defendants regularly failed to
9 pay Plaintiff, the Class, and the Aggrieved Employees at least minimum wages for all hours
10 worked. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
11 Employees were entitled to receive at least minimum wages for all hours worked and that they
12 were not receiving at least minimum wages for all hours worked. Defendants' failure to pay
13 minimum wages included, *inter alia*, failing to pay Plaintiff, the Class, and the Aggrieved
14 Employees at the required minimum wage pursuant to California law, and requiring Plaintiff, the
15 Class, and the Aggrieved Employees to perform work off the clock.

16 38. Throughout the time period involved in this case, Defendants regularly failed to
17 pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or
18 resignation. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
19 Employees were entitled to receive all wages owed to them upon termination within the time
20 permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved
21 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
22 including overtime compensation and minimum wages within any time permissible under
23 California Labor Code section 202.

24 39. Throughout the time period involved in this case, Defendants regularly failed to
25 pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible
26 under California law, including, *inter alia*, California Labor Code section 204. Defendants knew
27 or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
28 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved

1 Employees did not receive payment of all wages, including overtime compensation, minimum
2 wages, meal and rest period premiums, and vested by unused vacation time.

3 40. Throughout the time period involved in this case, Defendants regularly failed to
4 provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved
5 Employees. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
6 Employees were entitled to receive complete and accurate wage statements in accordance with
7 California law, but, in fact, they did not receive complete and accurate wage statements from
8 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours
9 worked, the actual gross wages earned and the correct rates of pay.

10 41. Throughout the time period involved in this case, Defendants regularly failed to
11 keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees.
12 Defendants knew or should have known that Defendants were required keep complete and
13 accurate payroll records for Plaintiff, the Class and the Aggrieved Employees in accordance with
14 California law, but, in fact, did not keep complete and accurate payroll records.

15 42. Throughout the time period involved in this case, Defendants regularly failed to
16 maintain accurate records relating to Plaintiff's, the Class', and the Aggrieved Employees' work
17 periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

18 43. Throughout the time period involved in this case, Defendants regularly failed to
19 pay Plaintiff, the Class, and Aggrieved Employees for vested but unused vacation time.
20 Defendants knew or should have known that Plaintiff, the Class, and Aggrieved Employees were
21 entitled to receive all wages owed to them upon termination, including vested and unused vacation
22 time. Plaintiff, the Class, and Aggrieved Employees did not receive payment of all final wages
23 owed to them upon discharge or resignation, including vested and unused vacation time.

24 44. Throughout the time period involved in this case, Defendants failed to provide
25 Plaintiff and the Aggrieved Employees with suitable seating, despite the fact that the nature of
26 their work reasonably permitted the use of seats.

27 45. Throughout the time period involved in this case, Defendants knew or should have
28 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees

1 pursuant to California law. Defendants had the financial ability to pay such compensation, but
2 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the
3 Class, and the Aggrieved Employees that they paid all wages owed to them, all in order to increase
4 Defendants' profits.

5 46. California Labor Code section 218 states that nothing in Article 1 of the Labor
6 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
7 to him [or her] under this article."

8 **FIRST CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 510 and 1198)**

10 **(Against All Defendants)**

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

13 48. California Labor Code section 1198 and the applicable Industrial Welfare
14 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
15 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
16 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

17 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
18 were required to pay Plaintiff and the other Class Members employed by Defendants, and working
19 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
20 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
21 (40) hours in a workweek.

22 50. The applicable IWC Wage Order further provides that Defendants are and were
23 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular
24 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
25 in excess of eight (8) hours on the seventh day of work in a workweek.

26 51. California Labor Code section 510 codifies the right to overtime compensation at
27 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
28 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of

1 work, and no overtime compensation at twice the regular hourly rate for hours worked in excess
2 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

3 52. During the relevant time period, Plaintiff and the other Class Members regularly
4 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

5 53. During the relevant time period, Defendants intentionally and willfully failed to
6 pay overtime wages owed to Plaintiff and the other Class Members.

7 54. Defendants' failure to pay Plaintiff and the other Class Members the unpaid
8 balance of overtime compensation, as required by California laws, violates the provisions of
9 California Labor Code sections 510 and 1198, and is therefore unlawful.

10 55. Pursuant to California Labor Code section 1194, Plaintiff and the other Class
11 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
12 attorneys' fees.

13 **SECOND CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 226.7 and 512(a))**

15 **(Against All Defendants)**

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

18 57. At all relevant times, the relevant IWC Order and California Labor Code sections
19 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by
20 Defendants.

21 58. At all relevant times, California Labor Code section 226.7 provides that no
22 employer shall require an employee to work during any meal or rest period mandated by an
23 applicable order of the California IWC.

24 59. At all relevant times, the applicable IWC Wage Order and California Labor Code
25 section 512(a) provide that an employer may not require, cause or permit an employee to work
26 for a work period of more than five (5) hours per day without providing the employee with a meal
27 period of not less than thirty (30) minutes, except that if the total work period per day of the
28 employee is no more than six (6) hours, the meal period may be waived by mutual consent of

1 both the employer and employee.

2 60. At all relevant times, California Labor Code section 512(a) further provides that
3 an employer may not require, cause or permit an employee to work for a work period of more
4 than ten (10) hours per day without providing the employee with a second uninterrupted meal
5 period of not less than thirty (30) minutes, except that if the total hours worked is no more than
6 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
7 the employee only if the first meal period was not waived.

8 61. During the relevant time period, Plaintiff and the other Class Members who were
9 scheduled to work for a period of time longer than six (6) hours, and who did not waive their
10 legally-mandated meal periods by mutual consent, were required to work for periods longer than
11 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

12 62. During the relevant time period, Plaintiff and the other Class Members who were
13 scheduled to work for a period of time in excess of ten (10) hours were required to work for
14 periods longer than ten (10) hours without a second uninterrupted meal period of not less than
15 thirty (30) minutes.

16 63. During the relevant time period, Defendants intentionally and willfully required
17 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that
18 were late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class
19 Members the full meal period premium for missed, shortened, late, or interrupted meal periods.

20 64. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 Class Members the full meal period premiums due pursuant to California Labor Code section
22 226.7.

23 65. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7 and 512(a).

25 66. Pursuant to the applicable IWC Wage Order and California Labor Code section
26 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
27 additional hour of pay at the employee's regular rate of compensation for each work day that the
28 meal period was not provided.

1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against All Defendants)**

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

6 68. At all times herein set forth, the applicable IWC Wage Order and California Labor
7 Code section 226.7 were applicable to Plaintiff and the other class members' employment by
8 Defendants.

9 69. At all relevant times, California Labor Code section 226.7 provides that no
10 employer shall require an employee to work during any rest period mandated by an applicable
11 order of the California IWC.

12 70. At all relevant times, the applicable IWC Wage Order provides that “[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period” and that the “rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof unless the total daily work time is less than three and one-half
17 (3.5) hours.”

18 71. During the relevant time period, Defendants required Plaintiff and other Class
19 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
20 period per each four (4) hour period worked.

21 72. During the relevant time period, Defendants willfully required Plaintiff and the
22 other Class Members to work during rest periods, failed to allow Plaintiff and the other class
23 Member to take any rest period and/or failed to authorize and permit Plaintiff and the other Class
24 members to take uninterrupted, duty-free rest breaks.

25 73. During the relevant time period, Defendants failed to pay Plaintiff and the other
26 Class Members the full rest period premium due pursuant to California Labor Code section 226.7
27 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff and
28 other Class Members from taking uninterrupted rest periods.

1 74. Defendants' conduct violates applicable IWC Wage Orders and California Labor
2 Code section 226.7.

3 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
4 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
5 additional hour of pay at the employees' regular hourly rate of compensation for each work day
6 that the rest period was not provided.

7 **FOURTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

9 **(Against All Defendants)**

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

12 77. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
13 provide that the minimum wage to be paid to employees and the payment of a lesser wage than
14 the minimum so fixed is unlawful.

15 78. During the relevant time period, Defendants regularly failed to pay minimum wage
16 to Plaintiff and the other Class Members as required pursuant to California Labor Code sections
17 1194, 1197, and 1197.1.

18 79. Defendants' failure to pay Plaintiff and the other Class Members the minimum
19 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
20 those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance
21 of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
22 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 80. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
24 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
25 unpaid and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 201, 202, 203)**

3 **(Against All Defendants)**

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

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

12 83. During the relevant time period, the employment of Plaintiff and many other Class
13 Members with Defendant ended, i.e. was terminated by quitting or discharge. Defendants
14 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer
15 employed by Defendants all of their wages, earned and unpaid, including but not limited to
16 minimum wages, straight time wages, overtime wages, and vested but unused vacation time,
within seventy-two (72) hours of their leaving Defendants' employ.

17 84. Defendants' failure to pay Plaintiff and other Class Members who are no longer
18 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
19 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

20 85. California Labor Code section 203 provides that if an employer willfully fails to
21 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
22 continue as a penalty from the due date thereof at the same rate until paid or until an action is
23 commenced; but the wages shall not continue for more than thirty (30) days.

24 86. Plaintiff and other Class Members who are no longer employed by Defendants are
25 entitled to recover from Defendants the statutory penalty wages for each day they were not paid,
26 up to a thirty (30) day maximum pursuant to California Labor Code section 203.

27 ///

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against All Defendants)**

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

6 88. At all material times set forth herein, California Labor Code section 226(a)
7 provides that every employer shall furnish each of his or her employees an accurate itemized
8 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3)
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
12 of the period for which the employee is paid, (7) the name of the employee and his or her social
13 security number, (8) the name and address of the legal entity that is the employer, and (9) all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee. The deductions made from payments of wages shall
16 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and
17 a copy of the statement or a record of the deductions shall be kept on file by the employer for at
18 least three years at the place of employment or at a central location within the State of California.

19 89. Defendants have intentionally and willfully failed to provide Plaintiff and the
20 Class with complete and accurate wage statements. The deficiencies include, but are not limited
21 to the failure list the total number of hours worked, the actual gross wages earned and the correct
22 rates of pay.

23 90. Because of Defendants' violation of California Labor Code section 226(a),
24 Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

25 91. More specifically, Plaintiff and the Class have been injured by Defendants'
26 intentional and willful violation of California Labor Code section 226(a) because they were
27 denied both their legal right to receive, and their protected interest in receiving, accurate and
28 itemized wage statements pursuant to California Labor Code section 226(a).

1 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
2 within the meaning of Code of Civil Procedure section 1021.5.

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

6 101. A violation of California Business & Professions Code section 17200, *et seq.* may
7 be predicated on the violation of any state or federal law. In this instant case, Defendants' policies
8 and practices of requiring employees, including Plaintiff and the Class, to work overtime without
9 paying them proper compensation violate California Labor Code sections 510 and 1198.
10 Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and
11 the Class, to work through their meal and rest periods without paying them proper compensation
12 violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and
13 practices of failing to timely pay wages to Plaintiff and the Class violate California Labor Code

14 102. Defendants also violated California Labor Code sections, 221, 226(a), 1194, 1197,
15 1197.1, 510, 1174(d) and 227.3.

16 103. As a result of the herein described violations of California law, Defendants
17 unlawfully gained an unfair advantage over other businesses.

18 104. Plaintiff and the Class have been personally injured by Defendants' unlawful
19 business acts and practices as alleged herein, including but not necessarily limited to the loss of
20 money and/or property.

21 105. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendants
23 during a period that commences four years prior to the filing of this Complaint; an award of
24 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable
25 laws; and an award of costs.

26 ///

27 ///

NINTH CAUSE OF ACTION

(Violation of California Labor Code § 2699, Et Seq.)

(Against All Defendants)

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

5
6 107. Plaintiff brings his Ninth cause of action as a representative action on behalf of himself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
7 to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.
8 (“PAGA”).

9
10 108. PAGA specifically provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
11 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
14 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
15 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
16 2699(a).

17
18 109. Plaintiff was employed by Defendants and the Labor Code violations alleged above were committed against him during his time of employment. Plaintiff is therefore, an “aggrieved
19 employee” under PAGA.

20
21 110. As set forth in detail above, during all times relevant to this Action, Defendant has routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
22 Codes by:

- 23 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
24 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 25 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
26 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;
- 27
28

- c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.
- d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512.
- e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of their employment in violation of Labor Code § 203.
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' in violation of Labor Code § 11749(d) and the applicable IWC Wage Order.
- i. Failing to pay Plaintiff and the Aggrieved Employees for all vested but unused vacation time in violation of Labor Code § 227.3.
- j. Failing to provide Plaintiff and the Aggrieved Employees with suitable seating in violation of Labor Code § 1198 and the applicable IWC Wage Order.

111. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title section 11010, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown

1 according to proof at trial.

2 112. Plaintiff has exhausted his administrative remedies pursuant to Labor Code §
3 2699.3. On June 30, 2020 Plaintiff, through his counsel of record, by online filing with the Labor
4 and Workforce Development Agency (“LWDA”) and by certified mail to the Defendants, notified
5 Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders
6 that Defendants have violated, including the facts and theories to support the violations, and of
7 Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee
8 required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65 days have
9 elapsed since the mailing of Plaintiff’s June 30, 2020 notice, and the Labor and Workforce
10 Development Agency has not indicated that it intends to investigate the violations discussed in the
11 notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and
12 other Aggrieved Employees pursuant to Labor Code § 2699.3.

13 113. Plaintiff was compelled to retain the services of counsel to file this court action to
14 protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties
15 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney’s fees and costs
16 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

17 114. Plaintiff may amend this complaint as a matter of right pursuant to California
18 Labor Code § 2699.3 as this complaint has been filed within sixty days of the time periods
19 specified in Labor Code §2699.3

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
22 public similarly situated, and as a private attorney general, prays for relief and judgment against
23 Defendants, jointly and severally, as follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action;
- 26 2. That Plaintiff be appointed as the representative of the Class;
- 27 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 28 4. That Defendants provide to Class Counsel immediately the names and most

1 current/last known contact information (address, e-mail and telephone numbers) of all class
2 members.

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

4 5. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
6 all overtime wages due to Plaintiff and other Class Members;

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

9 7. For pre-judgment interest on any unpaid overtime compensation commencing
10 from the date such amounts were due;

11 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Labor Code section 1194;

13 9. For such other and further relief as the Court may deem just and proper.

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

15 10. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
17 provide all meal periods (including second meal periods) to Plaintiff and the Class;

18 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
19 each employee's regular rate of compensation for each workday that a meal period was not
20 provided;

21 12. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 13. For premium wages pursuant to California Labor Code section 226.7(b);

24 14. For pre-judgment interest on any unpaid wages from the date such amounts were
25 due;

26 15. For reasonable attorneys' fees and costs of suit incurred herein;

27 16. For such other and further relief as the Court may deem just and proper.
28

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

2 17. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
4 periods to Plaintiff and the Class;

5 18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
6 each employee's regular rate of compensation for each workday that a rest period was not
7 provided;

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

10 20. For premium wages pursuant to California Labor Code section 226.7(b);

11 21. For pre-judgment interest on any unpaid wages from the date such amounts were
12 due;

13 22. For such other and further relief as the Court may deem just and proper.

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

15 23. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
17 Plaintiff and the Class;

18 24. For general unpaid wages and such general and special damages as may be
19 appropriate;

20 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
21 Plaintiff and the Class in the amount as may be established according to proof at trial;

22 26. For pre-judgment interest on any unpaid compensation from the date such amounts
23 were due;

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

26 28. For liquidated damages pursuant to California Labor Code section 1194.2;

27 29. For such other and further relief as the Court may deem just and proper.
28

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

2 30. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
4 time of termination of the employment of Plaintiff and other Class Members no longer employed
5 by Defendants;

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

8 32. For statutory wage penalties pursuant to California Labor Code section 203 for
9 Plaintiff and other Class Members who have left Defendants' employ;

10 33. For pre-judgment interest on any unpaid compensation from the date such amounts
11 were due;

12 34. For such other and further relief as the Court may deem just and proper.

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

14 35. That the Court declare, adjudge and decree that Defendants violated the record
15 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as
16 to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements
17 thereto;

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

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

20 38. For such other and further relief as the Court may deem just and proper.

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

22 39. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 227.3, 201, 202, and 203 by failing to pay Plaintiffs and the other class
24 members for all vested and unpaid vacation wages;

25 40. For vested unpaid vacation wages and penalties according to proof;

26 41. For all interest on wages owed;

27 42. For all reasonably attorneys' fees and costs recoverable by law; and

28 43. For such other and further relief as the Court may deem just and proper.

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

2 44. That the Court decree, adjudge and decree that Defendants violated California
3 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the Class
4 all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff
5 and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay
6 Plaintiff and other Class Members' wages timely as required by California Labor Code section
7 201, 202 and 204 and by violating California Labor Code sections 226(a), 227.3, 1174(d), 2800,
8 and 2082.

9 45. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment
10 interest from the day such amounts were due and payable;

11 46. For the appointment of a receiver to receive, manage and distribute any and all
12 funds disgorged from Defendants and determined to have been wrongfully acquired by
13 Defendants as a result of violation of California Business and Professions Code sections 17200,
14 et seq.;

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

17 48. For injunctive relief to ensure compliance with this section, pursuant to California
18 Business and Professions Code sections 17200, et seq.; and

19 49. For such other and further relief as the Court may deem just and proper.

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

21 50. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor
22 Code;

23 51. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
24 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor
25 Code and/or other applicable statutes; and

26 52. For such other relief as the Court deems just and proper
27
28

1 Dated: September 4, 2020

PROTECTION LAW GROUP

2
3 By: 

4 _____
5 Heather Davis
6 Amir Nayebdadash
7 S. Emi Minne
8 Attorneys for Plaintiff
9 TOMMY CARRILLO
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DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: September 4, 2020

PROTECTION LAW GROUP

By: 

Heather Davis
Amir Nayebdadash
S. Emi Minne
Attorneys for Plaintiff
TOMMY CARRILLO

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