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11 persons similarly situated and similarly aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

14 ARTURO BASULTO, individually and on
15 behalf of other persons similarly situated and
16 similarly aggrieved employees,

17 Plaintiffs,

18 v.

19 MT COLLISION CENTERS, LLC, an active
20 California Limited Liability Company; MT
21 COLLISION CENTERS, INC., an active
22 California Corporation; and DOES 1 through
23 25,

24 Defendants.

Case No.: 30-2023-01340093-CU-OE-
CXC

Assigned to: Hon. William D. Cluster
Department: CX-101
Complaint Filed: August 3, 2023

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED**

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;

7. Failure to Reimburse Business Expenses;
8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff ARTURO BASULTO (“Plaintiff”), on behalf of himself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant MT COLLISION CENTERS, LLC and Defendant MT COLLISION CENTERS, INC. (collectively referred to hereafter as “Defendants”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate and compliant wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendants employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendants are engaged in the business of automotive body repair services. Plaintiff was hired on or about April 7, 2021 and separated on or about January 27, 2023. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was employed by Defendants at their facility located at 2076 Placentia Avenue in Costa Mesa, California 92627.

- 1 4. At the time of his separation, Plaintiff was not paid all his wages, including all
2 accrued and vested vacation pay.
- 3 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
4 he was entitled to, and failed to receive accurate and compliant itemized wage
5 statements.
- 6 6. Defendants had a consistent policy of not paying wages, including overtime
7 and double time wages to the extent applicable, for all hours worked inclusive
8 of rounding and work off-the-clock. This includes the failure to properly factor
9 any piece-rate pay into the payment of wages and failure to compensate for rest
10 and recovery periods and other non-productive time separately from any piece-
11 rate compensation.
- 12 7. Defendants had a consistent policy of requiring their employees, including
13 Plaintiff, to work through meal periods or work without a meal period for at
14 least five (5) hours of a shift and failing to pay such employees one (1) hour of
15 pay at the employees' regular rate of compensation for each workday that the
16 meal period was not provided or as required by California state wage and hour
17 laws.
- 18 8. Defendants had a consistent policy of failing to allow their employees,
19 including Plaintiff, rest periods for at least ten (10) minutes per four (4) hours,
20 or a major fraction worked, and failing to pay such employees one (1) hour of
21 pay at their regular rate of compensation for each workday that the rest period
22 was not provided, or other compensation, as required by California state and
23 wage and hour laws.
- 24 9. Defendants knowingly provided inaccurate wage statements to their
25 employees, including Plaintiff, that did not correctly include the correct wages,
26 including compensation for meal periods not provided and rest period not
27 authorized or permitted as required by California state wage and hour laws.
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- 1 10. Defendants had a consistent policy of failing to pay their employees, including
2 Plaintiff, all wages including accrued and vested vacation pay, due at the
3 termination or separation, in violation of California state wage and hour laws.
- 4 11. Defendants had a consistent policy of failing to reimburse their employees,
5 including Plaintiff, for all business expenses incurred in the discharge of their
6 duties including for the purchase and use of necessary tools.
- 7 12. Plaintiff, on behalf of himself and all Class Members, brings this action
8 pursuant to Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.7, 227.3, 510,
9 512, 1194, 1194.2, 2800, and 2802 seeking unpaid wages, expense
10 reimbursement, penalties, equitable relief, and reasonable attorneys' fees and
11 costs.
- 12 13. Plaintiff, on behalf of himself and the putative class members, also brings
13 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
14 relief, restitution, and disgorgement of all benefits obtained by Defendants as a
15 result of Labor Code and applicable Wage Order violations.
- 16 14. Plaintiff, on behalf of the State of California, himself, and other similarly
17 aggrieved employees, also brings this action pursuant to California Private
18 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
19 wages and other compensation, penalties, and reasonable attorneys' fees and
20 costs.

21 II.

22 JURISDICTION AND VENUE

- 23 15. Venue as to as to each Defendant is proper in this judicial district, pursuant to
24 Code of Civil Procedure § 395. The County of Orange is the proper venue,
25 because work for Defendants was performed by Plaintiff and other class
26 members in the County of Orange and the legal obligations owed by
27
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1 Defendants to Plaintiff and other class members were breached in the County
2 of Orange.

3 16. The California Superior Court has jurisdiction in this matter, because Plaintiff is
4 a resident of California, Defendants are qualified to do business in California
5 and regularly conduct business in California.
6

7 III.

8 THE PARTIES

9 17. Plaintiff ARTURO BASULTO is a resident of the State of California, and was
10 employed by Defendants in Orange County from on or about April 7, 2021
11 through on or about January 27, 2023.

12 18. Defendant MT COLLISION CENTERS, LLC, was an active California Limited
13 Liability at all times during the claims of Plaintiff and the putative class and
14 was doing business in California. Defendant MT COLLISION CENTERS, INC.
15 was an active California Corporation at all times during the claims of Plaintiff
16 and the putative class and was doing business in California.

17 19. Plaintiff is ignorant of the true names, capacities, relationships and extent of
18 participation in the conduct herein alleged, of the defendants sued herein as
19 Does 1 through 25, but he is informed and believes and thereon alleges that said
20 defendants are legally responsible for the wrongful conduct alleged herein and
21 therefore sues these defendants by such fictitious names under Code of Civil
22 Procedure § 474. Plaintiff will amend this First Amended Complaint to allege
23 their true names and capacities when ascertained.

24 20. Plaintiff is informed and believes and thereon alleges that each Defendant acted
25 in all respects pertinent to this action as the agent of the other Defendants,
26 carried out a joint scheme, business plan or policy in all respects pertinent
27 hereto, and the acts of each Defendant are legally attributable to the other
28 Defendants.

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IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendants employed more than 100 people; and Plaintiff and each member of the putative class was employed by Defendants, and each of them, in the State of California.
22. The employees of Defendants have not been provided: uninterrupted thirty-minute meal periods for work periods of more than five (5) hours per day; second uninterrupted thirty-minute meal periods for work periods of more than ten (10) hours per day; and have not been permitted to take ten-minute (10) rest periods for work periods of four (4) hours or major fractions, pursuant to the Labor Code, and applicable IWC Wage Orders.
23. Defendants failed to pay employees wages owed for all hours worked, including overtime hours as applicable. This includes the failure to properly pay piece-rate compensation and factor any piece-rate pay into the payment of wages and failure to compensate for rest and recovery periods and other non-productive time separately from any piece-rate compensation. As well, Defendants failed to properly calculate and pay wages in accordance with employees' regular rate of compensation.
24. Defendants failed to pay Plaintiff and the members of his putative class upon separation the wages earned and unpaid at the time of discharge, including accrued and vested vacation pay or "PTO."
25. Defendants failed to provide Plaintiff and the putative members of his class, at the time of each payment of wages, an accurate itemized statement in writing, showing the gross wages/compensation earned and/or paid, including wages for rest and recovery periods and other nonproductive time, premium wages owed for failing to provide meal and/or rest periods at the proper intervals.

1 26. Defendants failed to fully reimburse Plaintiff and putative members of his class
2 for all their business-related expenditures. In violation of the Labor Code,
3 Plaintiff and putative members of his class did not receive indemnification for
4 all business-related expenditures including for the purchase and use of
5 necessary tools.

6 27. Plaintiff asserts claims for relief on behalf of himself and other similarly
7 situated persons as a class action pursuant to Code of Civil Procedure § 382.
8 Plaintiff and all members of his putative class are described below with
9 specificity and fall in several categories of subclasses whose rights have been
10 violated under the law. Defendants have made no effort as of the filing of this
11 First Amended Complaint to correct or remedy the violations of law specified
12 here.

13 **V.**

14 **CLASS ACTION ALLEGATIONS**

15 28. Plaintiff brings this action on behalf of himself and all other employees of
16 Defendants who are similarly-situated persons as a class action pursuant to
17 California Code of Civil Procedure § 382. There is a well-defined common
18 interest by and among Plaintiff and the putative class members, and it is
19 impractical to bring all those individuals before the court under separate,
20 different and repetitive actions. Plaintiff also reserves the right to amend or
21 modify the class descriptions set forth below in greater specificity or clarity if
22 required in the future in accordance with Rule 3.765 (b), California Rules of
23 Court. The class which Plaintiff seeks to represent is composed of and defined
24 as follows:

25 "Plaintiff Class" – All of Defendants' current and former non-exempt
26 employees who worked for Defendants in California, during the four
27 years before the filing of the Complaint through the time of class
28 certification.

1 29. Plaintiff seeks to certify the following subclasses of employees:

- 2 a) "Meal Period Subclass" – All members of Plaintiff Class who worked
3 each period exceeding five (5) hours without an uninterrupted, off
4 duty, thirty (30) minute meal period and/or periods in excess of ten (10)
5 hours without a second uninterrupted, off duty, thirty (30) minute
6 meal periods; and were not provided compensation of one hour's pay
7 at the employee's regular rate of compensation for each day that a meal
8 period was not provided.
- 9 b) "Rest Period Subclass" – All members of Plaintiff Class who worked
10 periods of four (4) hours or major fraction thereof without a duty free
11 rest period of at least 10-minutes and who were not compensated one
12 hour's pay at the employee's regular rate of compensation for each day
13 that a rest period was not permitted.
- 14 c) "Unpaid Wage Subclass" – All members of Plaintiff Class who were
15 not paid their minimum/actual wages, including any time that was
16 unlawfully rounded by Defendants or otherwise considered as off-the-
17 clock, as well as overtime wages for hours worked in excess of eight
18 hours per day at the one and a half rate (of an employee's regular rate
19 of compensation) or at a double time rate (of an employee's regular
20 rate of compensation) as applicable, as well as wages that were not
21 paid for rest periods, recovery periods, and other nonproductive time
22 under Labor Code § 226.2.
- 23 d) "Waiting Time Subclass" – All members of Plaintiff Class to whom
24 Defendants failed to pay all wages due to them upon termination or
25 resignation under Labor Code §§ 201-203.
- 26 e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom
27 Defendants failed to pay all vacation wages owed, vested or agreed to
28 upon termination or resignation as required by Labor Code §227.3.

- 1 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
2 Defendants improperly failed to provide accurate itemized wage
3 statements under Labor Code §§ 226.
- 4 g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to
5 whom Defendants failed to fully reimburse employee business
6 expenses as required by Labor Code §2802.
- 7 h) "UCL Subclass" – All members of the Meal Period, Rest Period,
8 Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and
9 Expense Reimbursement Subclasses who were subject to unlawful,
10 illegal, unfair and/or deceptive business acts and practices by
11 Defendants and are entitled to disgorgement and restitution of unpaid
12 wages.

13 30. There is a well-defined community of interest among many persons who
14 comprise a readily ascertainable class:

- 15 a) Numerosity -The potential members of the Class and Subclasses as
16 defined here are so numerous that the individual joinder of all of them as
17 named plaintiffs is impracticable. The number of members of the Class
18 and Subclasses is unknown to Plaintiff. It is however estimated that the
19 members are more than 100 individuals, and their identities may readily
20 be ascertained from Defendants' records.
- 21 b) Typicality – The claims of Plaintiff are typical of the claims of all
22 members of the Class and Subclasses, who sustained similar damages
23 arising out of Defendants' common course of conduct in violation of law
24 as alleged.
- 25 c) Ascertainable Class – The proposed Class and Subclasses are
26 ascertainable as the members can readily be identified and located based
27 on Defendants' payroll and personnel records.
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- 1 d) Adequacy – Plaintiff is an adequate representative of the Class and
2 Subclasses: Plaintiff will fairly protect the interests of the members, he
3 has no interest adverse to the members, and he will vigorously pursue
4 this lawsuit on behalf of all the members of the Class and Subclasses.
5 Plaintiff’s attorneys are competent, skilled and experienced in litigating
6 large employment law class actions.
- 7 e) Superiority - Class action treatment will allow a large number of
8 similarly situated persons to prosecute their common claims in a single
9 forum simultaneously, efficiently, and without the unnecessary
10 duplication of effort and expense that numerous individual actions
11 would require. Further, the monetary amounts due to many individual
12 members of the Class and Subclasses are likely to be relatively small, and
13 the burden and expense of individual litigation would make it difficult
14 or impossible for the members to seek and obtain relief. A class action
15 will serve an important public interest by permitting employees harmed
16 by Defendants’ unlawful practices to effectively pursue recovery of the
17 sums owed to them.
- 18 f) Common Questions of Law and Fact – There are common questions of
19 law and fact as to the members of the Class and Subclasses which are
20 superior to questions affecting only individual members of the Class and
21 Subclasses. The common questions of law and fact may be summarized
22 as follows and if necessary will be refined with the progress of formal
23 discovery in the case:
- 24 g) Whether Defendants failed to provide members of Plaintiff Class who
25 ceased employment with Defendants all wages owed at the time of the
26 cessation of the employee-employer relationship?
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- 1 h) Whether Defendants violated California law and applicable Wage
2 Orders by failing to provide Plaintiff Class members with paid ten-
3 minute (10) rest periods for each four hours worked?
- 4 i) Whether the remedy for an employer's failure to provide rest breaks as
5 required by law is a premium wage for hardship of missing a lawful rest
6 break?
- 7 j) Whether Defendants violated California law and applicable Wage
8 Orders by failing to provide Plaintiff Class members with thirty minute
9 (30) meal period for more than five hours of work?
- 10 k) Whether Defendants violated California law and applicable Wage
11 Orders by failing to provide members of Plaintiff Class with a second
12 meal period?
- 13 l) Whether the remedy for an employer's failure to provide meal period as
14 required by law is a premium wage for hardship of missing a lawful
15 meal period?
- 16 m) Whether Defendants violated California law, including the applicable
17 wage orders by failing to properly compensate Plaintiff Class members
18 for all hours worked, including overtime hours as applicable?
- 19 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
20 Code § 203?
- 21 o) Whether Defendants violated Labor Code §227.3 by their failure to
22 provide Plaintiff Class with all vacation wages or PTO owed, vested or
23 agreed to upon termination or separation?
- 24 p) Whether Defendants violated Labor Code §226.2 by their failure to
25 compensate Plaintiff Class for rest and recovery periods and other
26 nonproductive time separately from any piece-rate compensation?
- 27 q) Whether Defendants violated California law by their failure to provide
28 Plaintiff Class with accurate and itemized wage statements?

- 1 r) Whether Defendants have violated Labor Code §2802 by failing to
2 reimburse Plaintiff and the Plaintiff Class for all business expenses
3 incurred by them in direct consequence of the discharge of their duties?
4 s) Whether Defendants violated Business and Professions Code §§ 17200 et.
5 seq., Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.7, 227.3, 510,
6 512, 1194, 1194.2, 2800, 2802, and applicable Wage Orders which
7 constitute violations of the public policy?
8 t) Whether Plaintiff Class is entitled to an equitable relief in accordance
9 with Business and Professions Code §§ 17200 et. seq.
10 u) Whether Defendants' affirmative defenses, if any, raise common issues
11 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
12 particular?
13

14 **VI.**

15 **FIRST CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL PERIOD OR**
17 **COMPENSATION IN LIEU THEREOF**

18 **(Labor Code §§ 226.7, 512)**

19 **(By Plaintiff and Meal Period Subclass against Defendants)**

- 20 31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
21 as if fully alleged herein.
22 32. By their failure to provide thirty minute (30) uninterrupted meal period as well
23 as second meal period, if applicable, to Plaintiff and members of Meal Period
24 Subclass, Defendants willfully violated the provisions of Labor Code §§ 226.7,
25 512 and applicable IWC Wage Orders.
26 33. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
27 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
28 below, and fully incorporated here as applicable.

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VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendants)

34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
35. By their failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendants willfully violated Labor Code § 226.7 and applicable Wage Orders.
36. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VIII.

THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES

(Labor Code §§ 204, 210, 226.2, 510, 1194, 1194.2)

(By Plaintiff and the Unpaid Wage Subclass against Defendants)

37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendants covered by Labor Code §§ 204, 210, 226.2, 510, 1194, 1194.2 and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.
39. Defendants have violated California law and the specified provisions of the Labor Code and applicable Wage Orders by their failure to pay all wages due in

1 accordance, including minimum wages, wrongfully classified off-the-clock
2 wages and overtime pay, and failure to properly calculate and pay for rest and
3 recovery periods and other nonproductive time separately from any piece-rate
4 compensation. Notably, any wages that were paid were not effectively paid
5 within seven (7) days of the close of any applicable payroll period. As a result
6 of Defendants' unlawful conduct, Plaintiff and other members of the Subclass
7 have suffered damages as articulated in the Prayer for Relief, set forth below,
8 and fully incorporated here as applicable.

9 **IX.**

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES DUE AT TERMINATION**

12 **(Labor Code §§ 201, 202, 203)**

13 **(By Plaintiff and Waiting Time Subclass against Defendants)**

- 14 40. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
15 as if fully alleged herein.
- 16 41. By their failure to timely pay Plaintiff and Waiting Time Subclass, Defendants
17 willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable
18 Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails
19 to timely pay such wages, the employer must, as penalty, continue to pay the
20 employee's wages until the back wages are paid in full or an action is
21 commenced.
- 22 42. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
23 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
24 below, and fully incorporated here as applicable.

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X.

FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES DUE AT TERMINATION
(Labor Code §227.3)
(By Plaintiff and Vacation Pay Subclass against Defendants)

43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
44. By their failure to timely pay Plaintiff and Vacation Pay Subclass, Defendants willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor Code provides that whenever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility of time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.
45. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

XI.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code §226)
(By Plaintiff and Wage Statement Subclass against Defendants)

46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

1 47. By their failure to provide accurate itemized wage statements, semimonthly or
2 at the time of each payment of wages, Defendants willfully violated the
3 provisions of Labor Code §226 and applicable Wage Orders.

4 48. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
5 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
6 below, and fully incorporated here as applicable.

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8 **XII.**

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

11 **(Labor Code §§2800, 2802)**

12 **(By Plaintiff and Expense Reimbursement Subclass against Defendants)**

13 49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
14 as if fully alleged herein.

15 50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
16 indemnify his employee for losses caused by the employer's want of ordinary
17 care."

18 51. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
19 his or his employee for all necessary expenditures or losses incurred by the
20 employee in direct consequence of the discharge of his or his duties..."

21 52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
22 term 'necessary expenditures or losses' shall include all reasonable costs,
23 including but not limited to, attorney's fees incurred by the employee enforcing
24 the rights granted by this section."

25 53. During the relevant time period, Defendants were required to reimburse
26 Plaintiff and class members for all expenditures or losses caused by the
27 employer's want of ordinary care and/or incurred in direct consequence of the
28 discharge of their duties, but failed to indemnify and reimburse Plaintiff and
class members in violation of Labor Codes §§ 2800 and 2802.

1 54. As a direct and proximate result, Plaintiff and class members have suffered, and
2 continue to suffer, substantial losses, related to the use and enjoyment of such
3 monies to be reimbursed, lost interest on such monies, and expenses and
4 attorney's fees in seeking to compel Defendants to fully perform their
5 obligations under California law, all of their damage in amounts according to
6 proof at the time of trial.
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8 **XIII.**

9 **EIGHTH CAUSE OF ACTION**
10 **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT**
11 **(Bus. & Prof. Code §§ 17200, *et seq.*)**
12 **(By Plaintiff, Plaintiff Class and All Subclasses against Defendants)**

13 55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint
14 as if fully alleged herein.

15 56. The alleged unlawful conduct of Defendants constitutes unfair competition
16 pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of
17 action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for
18 the time period starting four (4) years before the filing of the Complaint.

19 57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have
20 suffered injury in fact and lost money or property. Plaintiff and said members
21 have been deprived of their rights as set forth in this First Amended Complaint,
22 including, but not limited to, payment of minimum and/or actual wages for all
23 hours worked.

24 58. Pursuant to Business and Professions Code § 17203, Plaintiff and other
25 members of Plaintiff Class and Subclasses are entitled to restitution of all wages
26 owed to them under the Labor Code, and interest thereon, in which they had a
27 property interest, which Defendants failed to pay to them but withheld and
28 retained for themselves. Restitution of the money owed to Plaintiff, Plaintiff
Class and Subclasses is necessary to prevent Defendants from becoming

1 unjustly enriched by their failure to comply with the Labor Code provisions.
2 59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover
3 reasonable attorney's fees in connection with their unfair competition claims
4 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine.

6 60. Plaintiff requests the court to issue a preliminary and permanent injunction
7 prohibiting Defendants from committing the Labor Code and applicable Wage
8 Order violations set forth in this First Amended Complaint, and Plaintiff and
9 the members of Plaintiff Class and Subclasses have suffered further damages as
10 articulated in the Prayer for Relief, set forth below, also incorporated here fully
11 as applicable.

12
13 **XIV.**

14 **NINTH CAUSE OF ACTION**
15 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**
16 **(LABOR CODE § 2699 *et seq.*)**
17 **(By Plaintiff and Aggrieved Employees Against Defendants)**

18 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
19 as if fully alleged herein.

20 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
21 private parties may recover civil penalties for violations of the California Labor
22 Code. PAGA penalties are in addition to any other relief available under the
23 Labor Code.

24 63. As set forth above, Defendants violated the California Labor Code by
25 consistently failing to employ Plaintiff and other similarly situated employees
26 in compliance with California law.

27 64. Plaintiff provided written notice by certified mail to Defendants on August 4,
28 2023, and electronic notice thereafter to the State Labor & Workforce

1 Development Agency ("LWDA"), of the legal claims and theories of this case.
2 To date, and after 65 days from the date of mailing of notice, the LWDA has not
3 notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim
4 for civil penalties under the PAGA. Accordingly, Plaintiff exhausted
5 administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA
6 claim was assigned case number LWDA-CM-973017-23 by the LWDA.
7 Appended hereto is a copy of the notice communicated by Plaintiff.

8
9 65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to
10 recover the maximum civil penalties permitted by law from Defendants for the
11 violations of Labor Code alleged in this First Amended Complaint and the
12 notice communicated by Plaintiff.

13 66. Plaintiff and all other aggrieved employees are also entitled to recover their
14 attorneys' fees and costs under Labor Code § 2699.

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16 **XV.**

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, on behalf of himself and all others similarly situated, Plaintiff
19 prays for relief and judgment against Defendants as follows:

20 A. An order certifying that Plaintiff may pursue his claims as a class action
21 under Section 382 of the Code of Civil Procedure; and it is further requested that
22 Plaintiff Class and each Plaintiff Subclass be certified;

23 B. An order appointing Plaintiff as Class representative;

24 C. An order appointing Plaintiff's counsel as Class counsel;

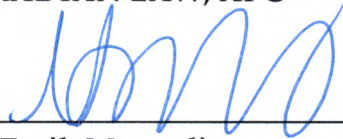
25 D. Disgorgement of Defendants' wrongfully obtained profits and restitution
26 of unpaid wages under Business and Professions Code §§ 17203, 17204;

27 E. Damages for unpaid additional compensation for failing to provide
28 timely or uninterrupted or lawful meal periods and rest periods;

- 1 F. Damages for unpaid rest and recovery periods and other nonproductive
2 time under Labor Code § 226.2;
- 3 G. Damages for unpaid minimum wages under Labor Code § 1194;
- 4 H. Liquidated damages under Labor Code § 1194.2;
- 5 I. Statutory penalties under Labor Code § 210;
- 6 J. Statutory penalties under Labor Code § 226(e);
- 7 K. Damages for unpaid penalty wages under Labor Code § 203;
- 8 L. Reimbursement of business expenses under Labor Code § 2802;
- 9 M. Damages for unpaid vacation wages at the time of discharge under
10 Labor Code § 227.3;
- 11 N. Reasonable attorney's fees and costs pursuant to statute, including, but
12 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;
- 13 O. Enjoinment of Defendants from further acts of unfair competition and
14 continuous violations of the Labor Code and applicable Wage Orders;
- 15 P. Civil penalties under Labor Code Section 2699 (75% payable to the
16 LWDA and 25% payable to aggrieved employees); and
- 17 Q. For such other relief that the Court may deem just and proper, including
18 prejudgment interest and costs.

19
20 DATED: October 12, 2023

MOORADIAN LAW, APC

21
22 By: 

23 Zorik Mooradian,

24 Haik Hacopian,

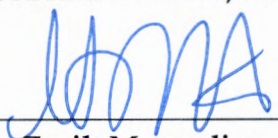
25 Attorneys for Plaintiff and the putative class
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27
28

1 **DEMAND FOR A JURY TRIAL**

2 Plaintiff ARTURO BASULTO hereby demands a jury trial in the above case.

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4
5 DATED: October 12, 2023

MOORADIAN LAW, APC

6
7 By: 

8 **Zorik Mooradian,**

9 **Haik Hacopian,**

10 Attorneys for Plaintiff and the putative class