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on behalf of himself and others similarly situated

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Superior Court of California
County of Sacramento
04/02/2024
By: Sarah Woltmon Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

PETER GERTZ, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

HUMAN TOUCH, LLC, a Delaware limited
liability corporation; INNOVATIVE
EMPLOYEE SOLUTIONS INC., a Colorado
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV000123

CLASS ACTION

Assigned To: Hon. Jill Talley

Dept.: 23

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
8. Penalties Pursuant to Labor Code § 203;
9. Failure to Pay Proper Sick Pay Under Labor Code §§ 245 *et seq.* 246;
10. Failure to Provide One Day's Rest in Seven;
11. Violation of Labor Code §§ 212 and 213;
12. Violation of Labor Code § 227.3;
13. Violation of Business & Professions Code § 17200 *et seq.*; and
14. Penalties Pursuant to Labor Code § 2699 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff PETER GERTZ, (hereinafter "Plaintiff") on behalf of himself and all others
2 similarly situated (collectively, "Employees") complains of HUMAN TOUCH, LLC, and
3 INNOVATIVE EMPLOYEE SOLUTIONS INC., Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by HUMAN TOUCH, LLC;
8 INNOVATIVE EMPLOYEE SOLUTIONS INC; and DOES 1 through 50 (all defendants being
9 collectively referred to herein as "Defendants"). Plaintiff alleges that Defendants, and each of
10 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
11 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress
12 therefore.

13 2. Plaintiff is a resident of California and was employed by Defendants as a non-
14 exempt hourly employee within the State of California at Defendants' facilities in California. At
15 times, Plaintiff and Employees working for Defendants in the state of California at Defendants'
16 facilities. Throughout the relevant time period, Plaintiff and Employees worked for Defendants in
17 Sacramento County, and in other nonexempt positions, throughout California, and consistently
18 worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and
19 Employees were employed by Defendants and worked at Defendants' facilities throughout
20 California where the conduct giving rise to the allegations in this Class Action Complaint
21 occurred. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
22 similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3)
23 endured similar violations at the hands of Defendants as Employees who served in similar and
24 related positions.

25 3. At times, Defendants required Plaintiff and Employees to work on a commission-
26 only basis with no hourly wages, no timekeeping, no rest periods, no meal periods, no overtime
27 pay, no non-productive time pay, no paid sick time, and insufficient business expense
28 reimbursements. Further, at times, Defendants required Plaintiff and Employees to work while off

1 the clock, to work through or skip meal periods, to skip rest periods, and to incur necessary
2 expenses in furtherance of their job duties without providing full reimbursements. In addition,
3 Defendants failed to pay Plaintiff and Employees for non-productive time and failed to pay
4 Plaintiff and Employees the regular rate when calculating overtime pay, sick pay, vacation pay,
5 and meal and rest premiums for pay periods in which Plaintiff and Employees worked towards or
6 earned non-discretionary bonuses including commissions, annual performance bonuses, shift
7 differentials and per diem payments.

8 **THE PARTIES**

9 **A. The Plaintiff**

10 4. Plaintiff PETER GERTZ has resided in California and during the time period
11 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
12 the State of California.

13 **B. The Defendants**

14 5. Defendant HUMAN TOUCH, LLC is a Delaware limited liability corporation with
15 its principal executive offices in Long Beach, California, and has been listed as the employer on
16 wage statements issued to Plaintiff during the relevant time period. HUMAN TOUCH, LLC
17 employed Plaintiff and the Employees in Sacramento County, including at Defendants' facilities
18 in Sacramento, California, and throughout California. Defendants conduct business throughout
19 California. Plaintiff is informed and believes, and based thereon alleges, that HUMAN TOUCH,
20 LLC is a "client employer" within the meaning of Labor Code §2810.3 that procures outplacement
21 staffing and payroll services from various staffing agencies, including but not limited to,
22 INNOVATIVE EMPLOYEE SOLUTIONS INC.

23 6. Defendant INNOVATIVE EMPLOYEE SOLUTIONS INC. is a Colorado
24 corporation with its California office located in San Diego, California and doing business in
25 California in the County of Sacramento, California, and has been listed as the employer on wage
26 statements issued to Plaintiff during the relevant time period. Plaintiff is informed and believes,
27 and based thereon alleges, that INNOVATIVE EMPLOYEE SOLUTIONS INC. is a "labor
28 contractor" within the meaning of Labor Code § 2810.3 that provides outplacement staffing and

payroll services for various industries and professions, including for HUMAN TOUCH, LLC.

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

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

JURISDICTION AND VENUE

9. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Sacramento County and Defendants maintain and operate in facilities in Sacramento County, and employ Plaintiff and other Class Members in Sacramento County and throughout California.

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1 **FACTUAL BACKGROUND**

2 10. The Employees who comprise the Class and Collective Action, including Plaintiff,
3 are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
4 Employees who work in nonexempt positions at the direction of Defendants in the State of
5 California. Plaintiff and Employees were not paid by Defendants for all hours worked, were not
6 paid at the appropriate minimum, regular and overtime rates, were not paid for non-productive
7 time, and were not provided or permitted to take legally compliant meal and rest periods. At
8 times, Plaintiff and Employees did not receive any hourly wages, did not receive meal or rest
9 periods, did not receive pay for non-productive time, did not receive legally required paid sick
10 time, and did not receive legally required overtime pay. Further, Plaintiff and Employees were
11 not paid for time spent working off the clock providing customer service, not paid for time spent
12 in mandatory trainings or meetings, not provided legally compliant meal periods or a premium
13 payment at the regular rate for each non-compliant meal period, not provided legally compliant
14 rest periods or a premium payment at the regular rate for each non-compliant rest period, not paid
15 overtime at the regular rate of pay, not paid for paid sick time, vacation, and meal and rest
16 premiums at the regular rate, not paid for non-productive time while on the clock or otherwise
17 under the control of Defendants, and not reimbursed for incurring necessary business expenses.

18 11. As a matter of Defendants' uniform company policy and practice, Plaintiff and the
19 Class members were required, at times, to work for Defendants without being compensated any
20 hourly wages which resulted in Plaintiff and Employees being paid less than the statutory
21 minimum wage at times. In addition, at times, Defendants failed to track the hours worked by
22 Plaintiff and Employees. Moreover, at times, Defendants failed to pay for Plaintiff's and
23 Employees' non-productive time. Further, due to Defendants uniform policies and practices,
24 Plaintiff and Class members were required to work during their entitled meal and rest breaks
25 which were not compensated by Defendants in violation of the California Labor Code. As a result,
26 Plaintiff and the Class members worked shifts over eight (8) hours in a day and over forty (40)
27 hours in a work week, but they were not paid at the appropriate overtime rate for all such hours,
28 including by being required to perform work duties and tasks without pay and while off-the-clock.

1 As a result, Plaintiff and Employees worked substantial overtime hours during their employment
2 with Defendants for which they were not compensated, in violation of the California Labor Code,
3 applicable IWC Wage Orders.

4 12. As a result of the above-described daily work demands and pressures to continue
5 working through breaks, and the other wage violations they endured at Defendants' hands,
6 Plaintiff and Employees were not properly paid for all wages earned and for all wages owed to
7 them by Defendants, including when working more than eight (8) hours in any given day and/or
8 more than forty (40) hours in any given week. As a result of Defendants' unlawful policies and
9 practices, Plaintiff and Employees incurred overtime hours worked for which they were not
10 adequately and completely compensated. Defendants also failed to pay Plaintiff and Employees at
11 an overtime rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive
12 workday in a week and overtime payments at the rate of 2 times the regular rate for hours worked
13 over eight (8) on the seventh consecutive workday, as required under the Labor Code and
14 applicable IWC Wage Orders.

15 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants had a consistent policy or practice of failing to pay Plaintiff
17 and Employees for all hours worked and failing to pay minimum wage for all time worked as
18 required by California Law.

19 14. Additionally from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants had a consistent policy or practice of failing to pay Plaintiff
21 and Employees overtime compensation at premium overtime rates for all hours worked in excess
22 of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked
23 in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
24 sections of IWC Wage Orders. At times when Plaintiff and Employees were paid by Defendants
25 for overtime work, Defendants did not pay Plaintiff and Employees overtime pay based on their
26 regular rate of pay by failing to calculate the non-discretionary bonuses worked towards or earned
27 by Plaintiff and Employees during the pay periods in which they worked overtime. For example,
28 Plaintiff and Employees were paid commissions and per-diem payments that were earned on a

1 sales-based formula created by Defendants. Defendants also paid Plaintiff and Employees shift
2 differential payments but failed to include such payments in the calculation of overtime pay for
3 overtime worked during the workdays and workweeks in which shift differentials were earned. In
4 addition, Defendants paid Plaintiff and Employees annual sales performance bonuses based on the
5 revenue or amount of sales made by Plaintiff and Employees but failed to include such
6 nondiscretionary bonuses into Plaintiff's and Employees' regular rate. Moreover, as a result of
7 Defendants' uniform company policy and practice, Plaintiff and Employees were required, at
8 times, to work seven (7) or more days in a row without being paid at an overtime rate of 1.5 times
9 higher than the regular rate of pay for the first eight (8) hours on the seventh consecutive day of
10 work and without being paid at an overtime rate of 2 times higher than the regular rate of pay for
11 every hour worked after the eighth hour on the seventh consecutive day of work or for any time
12 worked on any consecutive day beyond the seventh consecutive day.

13 15. Additionally from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants have regularly required Plaintiff and Employees to work
15 shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not
16 less than thirty (30) minutes and shifts in excess of ten (10) hours without providing them with
17 second meal periods of not less than thirty minutes; nor did Defendants pay Employees "premium
18 pay," i.e. one hour of wages at each Employee's effective regular rate of pay, for each meal period
19 that Defendants failed to provide or deficiently provided.

20 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
21 present, Defendants have consistently failed to provide Plaintiff and Employees with paid rest
22 breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive
23 hours or major fraction thereof; nor did Defendant pay Employees premium pay for each day on
24 which requisite rest breaks were not provided or were deficiently provided at one hour of wages at
25 each Employee's effective regular rate of pay, for each rest period that Defendants failed to
26 provide or deficiently provided.

27 17. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants have failed to reimburse Plaintiff and Employees for expenses necessarily

1 incurred in the performance of their job duties for Defendants including, but not limited to, cost of
2 mileage, cell phone usage, and internet usage which were necessary to perform their duties under
3 Defendants' employ in violation of Labor Code § 2802.

4 18. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
5 continuing to the present, Defendants have consistently failed to provide Employees with timely,
6 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

7 19. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
8 continuing to the present, Defendants have consistently failed to keep accurate time and wage
9 records as required by California wage-and-hour laws.

10 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
11 to the present, Defendants have had a consistent policy of failing to pay all wages due and owed to
12 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
13 required by California wage-and-hour laws.

14 21. Defendants also violated California Labor Code § 246 by not providing all required
15 paid sick days to Plaintiff and Employees. Labor Code § 246 provides that an employee who
16 "works in California for the same employer for 30 or more days within a year from the
17 commencement of employment is entitled to paid sick days as specified in this section." Labor
18 Code § 246(b) requires that "[a]n employee shall accrue paid sick days at the rate of not less than
19 one hour per every 30 hours worked ... [or] 24 hours of accrued sick leave or paid time off by the
20 120th calendar day of employment or each calendar year, or in each 12-month period." Further,
21 when Plaintiff and Employees did receive paid sick time, Defendants did not pay such at the
22 regular rate of pay as required under Labor Code § 246(l). Labor Code § 246(l)(1) provides that
23 paid sick leave should be calculated "in the same manner as the regular rate of pay for the
24 workweek in which the employee uses paid sick time, whether or not the employee actually works
25 overtime in that workweek." Defendants failed to provide Plaintiff and Employees with all their
26 required and earned sick days, and when Plaintiff and Employees did receive sick time, it was not
27 paid at the regular rate of pay, in violation of Labor Code § 246.

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1 22. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants violated Labor Code § 551 by not providing Plaintiff and Employees to one
3 day's rest in seven. Defendants required Employees to work more than six consecutive days
4 without a day of rest, where the total hours worked exceeded 30 hours in any week or six hours in
5 any one day thereof. For example, Defendant required Plaintiff and Employees to work specified
6 shifts for seven or more consecutive calendar days, including for example, assigning Plaintiff and
7 Employees shifts at specific locations for ten consecutive calendar days. Not only have Defendants
8 failed to pay any overtime premiums to Plaintiff and Employees for consecutive days worked after
9 the sixth consecutive day, but Defendants have intentionally and repeatedly assigned Plaintiff and
10 Employees work schedules requiring Plaintiff and Employees to work ten days in a row for well
11 over a total of 30 hours. In addition, based on information and belief, Defendants defined the
12 workweek in such a manner as to minimize or reduce the amount of overtime worked by Plaintiff
13 and Employees, whether it be for weekly overtime over 40 hours of work or for overtime for
14 working over 6 consecutive days.

15 23. From at least four years prior to filing this lawsuit and continuing to the present,
16 Defendants violated Labor Code §§ 212 and 213 by issuing payment to Plaintiff and Employees
17 for their wages in a non-Labor Code-compliant instrument. For example, at times, Defendants
18 paid Plaintiff and Employees annual sales and performance-based bonuses in separate methods of
19 payment from payment of other earned wages, for instance by gift card.

20 24. Defendants also had a common policy and practice of systemically failing to pay
21 Plaintiff and Employees the requisite and accrued vacation time pay in accordance with California
22 Law. Specifically, Plaintiff and Employees accrued vested vacation time and/or paid time off.
23 However, Defendants failed to pay all accrued vacation time and/or paid time off owed to Plaintiff
24 and Employees upon their separation from employment. In addition, whenever Plaintiff and
25 Employees did receive payment of vacation wages or paid time off, Defendants did not pay such
26 at Plaintiff's and Employees' regular rate because Defendants failed to include Plaintiff's and
27 Employees' nondiscretionary commissions, nondiscretionary bonuses, and shift differentials into
28 payment of vacation wages or paid time off.

25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 201.3, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 248.5, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.*, and 2802.

26. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

27. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants as non-exempt employees within the State of California at any time within four (4) years of the filing of this lawsuit.

28. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

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

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

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

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

e. Subclass 5. Failure to Reimburse for Necessary Business Expenditures Subclass.

All Class members who were subject to Defendants failing to reimburse for expenses necessarily

1 incurred in the performance of Employees' job duties for Defendants which were necessary to
2 perform their duties under Defendants' employ.

3 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
4 applicable limitations period, were not provided with accurate itemized wage statements.

5 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
6 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
7 by California wage-and-hour laws.

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

12 i. Subclass 9. Sick-Pay Class: All Class members who did not receive legally
13 required paid sick time off.

14 j. Subclass 10. One Day's Rest Class: All Class members who worked more than six
15 consecutive days in a row for a total of over 30 hours at the direction of Defendants.

16 k. Subclass 11. Improper Wage Issuance Class: All Class members who did not
17 receive payment of wages, including non-discretionary bonuses, in a method in compliance with
18 Labor Code sections 212 and 213.

19 l. Subclass 12. Vacation-Pay Class: All Class members who did not receive legally
20 required payment of vacation and/or paid time off upon separation of employment;

21 m. Subclass 13. UCL Subclass. All Class members who are owed restitution as a result
22 of Defendants' business acts and practices, to the extent such acts and practices are found to be
23 unlawful, deceptive, and/or unfair.

24 29. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
25 modify the class description with greater particularity or further division into subclasses or
26 limitation to particular issues.

27 30. This action has been brought and may properly be maintained as a class action
28 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community

of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

31. The potential members of the class as defined are so numerous that joinder of all the members of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 non-exempt individuals within the State of California.

32. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

33. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants failed to pay Employees the proper regular rate by failing to calculate non-discretionary bonuses, commissions, and shift-differentials worked towards or earned by Employees in the pay period Employees worked overtime, were paid meal or rest premiums, used paid sick time, or used vacation time;
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a);

- 1 h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 2 i. Whether Defendants failed to reimburse Employees for necessary business
- 3 expenses in violation of Labor Code § 2802;
- 4 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 5 wages and compensation due and owing at the time of termination or separation of employment;
- 6 k. Whether Defendants violated Labor Code § 246 by not providing employees with
- 7 all legally required paid sick days;
- 8 l. Whether Defendants violated Labor Code §§ 551 and 552 for requiring Class
- 9 Members to work over six consecutive days in a row for at least six hours a day for over 30 hours
- 10 total;
- 11 m. Whether Defendants violated Labor Code §§ 212 and 213 by paying Employees
- 12 earned wages, including non-discretionary bonuses, in the form of gift cards;
- 13 n. Whether Defendants violated Labor Code § 227.3 by failing to pay Employees
- 14 vacation and/or paid time off upon separation of employment;
- 15 o. Whether Defendants are liable for penalties under Labor Code § 2699, et seq.;
- 16 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 17 q. Whether Employees are entitled to equitable relief pursuant to Business and
- 18 Professions Code § 17200 *et seq.*

19 **C. Typicality**

20 34. The claims of the named plaintiff are typical of those of the other Employees.

21 Employees all sustained injuries and damages arising out of and caused by Defendants' common

22 course of conducts in violation of statutes, as well as regulations that have the force and effect of

23 law, as alleged herein.

24 **D. Adequacy of Representation**

25 35. Plaintiff will fairly and adequately represent and protect the interest of Employees.

26 Counsel who represents Employees are experienced and competent in litigating employment class

27 actions.

28 ///

1 **E. Superiority of Class Action**

2 36. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all employees predominate over any questions affecting only
5 individual employees. Each employee has been damaged and is entitled to recovery by reason of
6 Defendants' illegal policies or practices of failing to compensate Employees properly.

7 37. Class action treatment will allow those persons similarly situated to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Against All Defendants)**

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

15 39. Defendants failed to pay Employees minimum wages for all hours worked.
16 Defendants had a consistent policy of misstating Employees' time records and failing to pay
17 Employees for all hours worked. As a result of Defendants' uniform policies and practices,
18 Plaintiff and Employees were required, at times, to work for Defendants without being
19 compensated any hourly wages which resulted in Plaintiff and Employees being paid less than
20 the statutory minimum wage at times. In addition, at times, Defendants failed to track the hours
21 worked by Plaintiff and Employees. Moreover, at times, Defendants failed to pay for Plaintiff's
22 and Employees' non-productive time. Further, due to Defendants uniform policies and practices,
23 Plaintiff and Class members were required to work during their meal and rest breaks which were
24 not compensated by Defendants in violation of the California Labor Code. Moreover, Defendants
25 did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked,
26 including time spent off the clock providing customer service and attending conventions.
27 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
28 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that

1 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
2 wage pay.

3 40. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
4 states:

5 The minimum wage for employees fixed by the commission is the minimum
6 wage to be paid to employees, and the payment of a less wage than the
7 minimum so fixed is unlawful.

8 41. The applicable minimum wages fixed by the commission for work during the
9 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
10 therefore entitled to double the minimum wage during the relevant period.

11 42. The minimum wage provisions of California Labor Code are enforceable by private
12 civil action pursuant to California Labor Code § 1194(a) which states:

13 Notwithstanding any agreement to work for a lesser wage, any employee
14 receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil
16 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney’s
fees and costs of suit.

17 43. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
18 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

19 44. California Labor Code § 1194.2 also provides for the following remedies:

20 In any action under Section 1194 . . . to recover wages because of the
21 payment of a wage less than the minimum wages fixed by an order of the
22 commission, an employee shall be entitled to recover liquidated damages in
an amount equal to the wages unlawfully unpaid and interest thereon.

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

26 46. Wherefore, Employees are entitled to recover the unpaid minimum wages
27 (including double minimum wages), liquidated damages in an amount equal to the minimum
28

1 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
2 to California Labor Code § 1194(a).

3 **SECOND CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

8 48. By their conduct, as set forth herein, Defendants violated California Labor Code §
9 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
10 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
11 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
12 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
13 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
14 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
15 paying Employees wages for all hours worked by requiring Plaintiff and Employees, at times, to
16 work for Defendants without being compensated any hourly wages which resulted in Plaintiff and
17 Employees being paid less than the statutory minimum wage at times. In addition, at times,
18 Defendants failed to track the hours worked by Plaintiff and Employees. Moreover, at times,
19 Defendants failed to pay for Plaintiff's and Employees' non-productive time. Further, due to
20 Defendants uniform policies and practices, Plaintiff and Class members were required to work
21 during their meal and rest breaks which were not compensated by Defendants in violation of the
22 California Labor Code. Plaintiff and Employees regularly worked over 8 hours on a given day
23 without receiving overtime compensation.

24 49. At times when Plaintiff and Employees were paid by Defendants for overtime
25 work, Defendants did not pay Plaintiff and Employees overtime pay based on their regular rate of
26 pay by failing to calculate the non-discretionary commissions and bonuses earned by Plaintiff and
27 Employees during the pay periods in which they worked overtime. For example, Plaintiff and
28 Employees were paid commissions and per-diem payments that were earned on a sales-based

1 formula. Defendants also paid Plaintiff and Employees shift differential payments but failed to
2 include such payments in the calculation of overtime pay for overtime worked during the pay
3 periods in which shift differentials were worked or earned. In addition, Defendants paid Plaintiff
4 and Employees annual sales performance bonuses based on the revenue or amount of sales made
5 by Plaintiff and Employees but failed to include such non-discretionary bonuses into Plaintiff's
6 and Employees' regular rate. Therefore, during times when Plaintiffs and Employees worked
7 overtime and received shift differentials, non-discretionary commissions, incentive pay, and/or
8 non-discretionary bonuses, Defendants failed to pay all overtime wages by paying a lower
9 overtime rate than required.

10 50. Moreover, as a result of Defendants' uniform company policy and practice,
11 Plaintiff and Employees were required to work seven (7) or more days in a row without being paid
12 at an overtime rate of 1.5 times higher than the regular rate of pay for the first eight (8) hours on
13 the seventh consecutive workday and without being paid at an overtime rate of 2 times higher than
14 the regular rate of pay for every hour worked after the eighth hour on the seventh consecutive day
15 of work or for any time worked on any consecutive day beyond the seventh consecutive day.

16 51. Defendants' failure to pay compensation in a timely fashion also constituted a
17 violation of California Labor Code § 204, which requires that all wages shall be paid
18 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
19 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
20 and overtime compensation earned by Employees. Each such failure to make a timely payment of
21 compensation to Employees constitutes a separate violation of California Labor Code § 204.

22 52. Defendants' failure to pay compensation in a timely fashion also constituted a
23 violation of California Labor Code § 201.3, which instructs that "if an employee of a temporary
24 services employer is assigned to work for a client, that employee's wages are due and payable no
25 less frequently than weekly, regardless of when the assignment ends, and wages for work
26 performed during any calendar week shall be due and payable not later than the regular payday of
27 the following calendar week." From four (4) years prior to the filing of this lawsuit to the present,
28 in direct violation of that provision of the California Labor Code, Defendants have failed to pay

1 all wages and overtime compensation earned by Employees. Each such failure to make a timely
2 payment of compensation to Employees constitutes a separate violation of California Labor Code
3 § 201.3.

4 53. From four (4) years prior to the filing of this lawsuit to the present, in direct
5 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
6 and overtime compensation earned by Plaintiff and Employees. Each such failure to make a
7 timely payment of compensation to Employees constitutes either a separate violation of
8 California Labor Code § 204 or § 201.3.

9 54. Plaintiff and Employees have been damaged by these violations of California
10 Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

11 55. Consequently, pursuant to California Labor Code §§ 201.3, 204, 510, and 1194
12 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to Plaintiff
13 and Employees for the full amount of all their unpaid wages and overtime compensation, with
14 interest, plus their reasonable attorneys' fees and costs.

15 **THIRD CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 57. Employees regularly worked shifts greater than five (5) hours and greater than ten
21 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
22 more than five (5) hours without providing him or her with a meal period of not less than thirty
23 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
24 meal period of not less than thirty (30) minutes.

25 58. Defendants failed to provide Employees with meal periods as required under the
26 Labor Code. Plaintiff and Employees regularly worked over five (5) consecutive hours on a given
27 day without receiving compliant meal periods. At times, Defendants did not track Plaintiff and
28 Employees' time worked and Plaintiff and Employees did not receive legally compliant meal

1 periods. Further, Employees were consistently required to work through their meal periods which
2 they were consistently denied. Plaintiff and Employees were also required to take meal periods
3 after working beyond the five (5) hour shifts. During meal periods, Employees would be disrupted
4 or interrupted by Defendants or Defendants' customers with work related requests and
5 communications. Plaintiff and Employees were also, at times, not permitted to take full and
6 complete thirty-minute meal periods, and otherwise took meal periods shorter than thirty minutes
7 in length, due to the control exercised upon Employees by Defendants. Furthermore, Employees
8 were regularly required to work for more than ten (10) hours in a given shift without receiving a
9 second uninterrupted thirty (30) minute meal period as required by law.

10 59. Moreover, Defendants failed to compensate Employees for each meal period not
11 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
12 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 hour of pay at the employee's regular rate of compensation for each workday that the meal period
15 is not provided. Defendants failed to compensate Plaintiff and Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 of the applicable IWC Wage Order. Additionally, when Defendants did pay meal period
18 premiums, they did so at the normal regular rate of pay without factoring in all forms or
19 remuneration/compensation or by otherwise incorrectly calculating the regular rate.

20 60. Therefore, pursuant to Labor Code § 226.7, Plaintiff and Employees are entitled to
21 damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each
22 meal period not provided or deficiently provided, a sum to be proven at trial. Plaintiff and
23 Employees are also entitled to prejudgment interest for such damages.

24 **FOURTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

1 62. Plaintiff and Employees consistently worked over three-and-one-half (3.5) hour
2 and six (6) hour shifts. At times, Plaintiff and Employees worked over ten (10) hours in a single
3 workday. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were
4 entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift
5 or major fraction thereof.

6 63. Defendants failed to provide Employees with timely rest breaks of not less than ten
7 (10) minutes for each consecutive four (4) hours of work, or major fraction thereof, when
8 Employees worked over three-and-one-half (3.5) hours in a workday. Moreover, if Plaintiff and
9 Employees did attempt to take a rest break, Defendants failed to pay for such rest break as non-
10 productive time. In other words, Defendants did not provide paid rest periods because they paid
11 Plaintiff and Employees at an hourly rate and then deducted all hourly wages from earned
12 commissions which were paid subsequent to hourly wage payments. Plaintiff and Employees did
13 not receive any paid rest period or pay for non-productive time.

14 64. Moreover, Defendants failed to compensate Employees for each rest period not
15 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
16 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
17 accordance with this section, the employer shall pay the employee one hour of pay at the
18 employee's regular rate of compensation for each workday that the rest period is not provided.
19 Defendants failed to compensate Plaintiff and Employees for each rest period not provided or
20 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
21 Order. Additionally, when Defendants did pay rest period premiums, they did so at the normal
22 regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise
23 incorrectly calculating the regular rate.

24 65. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
25 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
26 worked without the required rest breaks, a sum to be proven at trial. Plaintiff and Employees are
27 also entitled to prejudgment interest for such damages.

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1 **FIFTH CAUSE OF ACTION**
2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
3 **IN VIOLATION OF LABOR CODE § 2802**

4 **(Against All Defendants)**

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

7 67. Under Labor Code § 2802(a) an employer must indemnify its employees for all
8 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of his or her duties, or of his or her obedience to the directions of the employer.

10 68. Employees incurred necessary expenditures in the performance of their job duties
11 for Defendants, namely the cost of mileage, cell phone usage to communicate with management
12 and provide customer service, and internet usage both on the go and at home in order to provide
13 customer service and communicate with management, which were necessary to perform their
14 duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit
15 and continuing to the present, Defendants consistently failed to reimburse Employees for these
16 necessarily incurred business expenses.

17 69. As a result of the unlawful acts of Defendants, Employees have been deprived of
18 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
19 plus interest and penalties thereon, attorneys' fees, and costs.

20 **SIXTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(Against All Defendants)**

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

25 71. California Labor Code § 226(a) requires an employer to furnish each of his or her
26 employees with an accurate, itemized statement in writing showing inclusive dates of the pay
27 period, the gross and net earnings, total hours worked, and the corresponding number of hours
28 worked at each hourly rate. In addition, Labor Code § 226(a) requires that the wage statement

1 depict “the name and address of the legal entity that is the employer. Further, Labor Code § 226(a)
2 requires accurate and itemized wage statements to reflect the number of piece-rate units earned or
3 otherwise units sold, the type of pieces earned, and the specific piece rate pay. These statements
4 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to
5 pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may
6 be given to the employee separately from the payment of wages. In either case the employer must
7 give the employee these statements twice a month or each time wages are paid.

8 72. Defendants failed to provide Employees with accurate itemized wage statements in
9 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
10 Defendants failed to accurately account for wages, hours worked, overtime, premium pay for
11 deficient meal periods and rest breaks, and the type, quantity, and pay rate for piece-rate units
12 earned, all of which Defendants knew or reasonably should have known were owed to Employees,
13 as alleged hereinabove. The wage statements provided to Employees were confusing and required
14 Employees to engage in discovery and refer to outside sources to verify whether their pay was
15 correct and potentially resulting in a miscalculation by the Employees.

16 73. As a direct and proximate cause of Defendants’ violation of Labor Code § 226(a),
17 Employees suffered injuries, including among other things confusion over whether they received
18 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
19 forcing them to make mathematical computations to analyze whether the wages paid in fact
20 compensated them correctly for all hours worked.

21 74. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
22 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
24 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
25 award of costs and reasonable attorneys’ fees.

26 75. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
27 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
28 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each

1 employee for each pay period.

2 76. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
3 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
4 shown according to proof. Plaintiff and Employees are also entitled to an award of costs and
5 reasonable attorneys' fees.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**
8 **and 1174.5**
9 **(Against All Defendants)**

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

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

16 79. During the course of Plaintiff's and Employees' employment, Defendants
17 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
18 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
19 overtime, and premium pay as discussed above.

20 80. Defendants are also required by California Labor Code § 1198 and the applicable
21 Wage Order to maintain a tracking system that accurately records the times at which Employees
22 works.

23 81. Defendants have maintained a common unlawful policy and practice of failing to
24 accurately record meal breaks. At all times relevant hereto, Defendants had maintained an
25 unlawful uniform policy and practice of editing the time records entered by its Employees to
26 change the actual meal break times recorded by the employee, in order to make it appear as though
27 Defendants' Employees took timely and compliant meal breaks.

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1 82. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
2 knew wages to be due but failed to pay them.

3 83. Accordingly, Defendants are liable for civil penalties pursuant to the California
4 Labor Code including §§ 1174.5 for the three (3) years prior to the filing of this Complaint.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 203**
7 **(Against All Defendants)**

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

10 85. Numerous Employees are no longer employed by Defendants; they either quit
11 Defendants' employ or were fired therefrom.

12 86. Defendants failed to pay these Employees all wages due and certain at the time of
13 termination or within seventy-two (72) hours of resignation.

14 87. The wages withheld from these Employees by Defendants remained due and owing
15 for more than thirty (30) days from the date of separation of employment.

16 88. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
17 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
18 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
19 to thirty (30) days from the date they were due. Plaintiff and Employees are also entitled to an
20 award of costs and reasonable attorneys' fees.

21 **NINTH CAUSE OF ACTION**
22 **FAILURE TO PAY PROPER SICK PAY UNDER LABOR CODE §§ 245 ET SEQ. 246**
23 **(Against All Defendants)**

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

26 90. California Labor Code § 245 et seq. requires that Defendants provide paid sick time
27 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
28 times relevant, Defendants have failed compute the amount due for paid sick time in conformance

1 with the pay calculation under California Labor Code § 246(l).

2 91. Defendants had a common policy and practice of systemically failing to provide
3 Plaintiff and Employees with paid sick leave or paid time off in accordance with California Law.
4 Specifically, Plaintiff and Employees worked for Defendants for more than 30 days but were not
5 provided at least one hour of paid sick pay for every 30 hours of work, or at least 3 days of paid
6 sick time for every 12-month period of work. Additionally, when Plaintiff and Employees used
7 paid sick leave, Defendants did not pay Plaintiff and Employees based on their proper regular rate
8 of pay by failing to include the non-discretionary commissions and bonuses and shift differentials
9 earned by Plaintiff and Employees.

10 92. Therefore, Sick Pay Class Members are owed the unpaid balance of said wages
11 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6
12 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or
13 penalties pursuant to Labor Code § 558(a).

14 **TENTH CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE §§ 551, 552 FOR FAILURE TO PROVIDE ONE**

16 **DAY'S REST IN SEVEN**

17 **(Against All Defendants)**

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

20 94. At all relevant times herein, Labor Code § 551 provides that every person
21 employed in any occupation of labor is entitled to one day's rest in seven. Additionally, Labor
22 Code § 552 prohibits employers from requiring employees to work more than six consecutive days
23 without a day of rest.

24 95. At all relevant times herein set forth, Labor Code § 556 exempts an employer from
25 the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours
26 in any week or six hours in any one day thereof.

27 96. During the relevant time period, Defendants scheduled Plaintiff and Employees to
28 work six (6) or more hours per day or for a total of more than 30 hours for more than six (6)

1 consecutive calendar days. Not only have Defendants failed to pay any overtime premiums to
2 Plaintiff and Employees for consecutive days worked after the sixth consecutive day, but
3 Defendants have intentionally and repeatedly assigned Plaintiff and Employees work schedules
4 requiring Plaintiff and Employees to work approximately ten days consecutively for well over a
5 total of 30 hours. In addition, based on information and belief, Defendants defined the workweek
6 in such a manner as to minimize or reduce the amount of overtime worked by Plaintiff and
7 Employees, whether it be for weekly overtime over 40 hours of work or for overtime for working
8 over six (6) consecutive days. Because Plaintiff and Employees worked over 30 hours per week
9 and/or over six (6) hours per day in a workweek, they were not exempt from the day-of-rest
10 requirement. To the extent that Plaintiff and Employees may have signed purported waivers of
11 their right to a day's rest in seven, such waivers are invalid. Thus, during the relevant time period,
12 and in violation of Labor Code § 551 and 552, Defendants willfully caused Plaintiff and
13 Employees to work more than six days in seven.

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

23 98. Plaintiff and Employees are therefore entitled to recover statutory penalties
24 authorized for violations of California Labor Code §§ 551, 552 and 558, and Plaintiff also seeks
25 attorneys’ fees and costs.

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ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 212 AND 213
(Against All Defendants)

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

100. California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of Labor Code § 212(a)(1) forbids an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for by the instrument.

101. Labor Code § 213 prohibits an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to Labor Code §213(d).

102. Defendants violated Labor Code §§ 212 and 213 by issuing payment to Plaintiff and Employees for their wages in a non-Labor Code-compliant instrument as Defendants would issue gift cards to Plaintiff and Employees to be included as a form of compensation for non-discretionary bonus payments as described above.

103. Accordingly, Plaintiff is entitled to recover, and hereby seeks all statutory penalties authorized for violations of California Labor Code §§ 551, 552 and 558, and Plaintiff seeks all statutory penalties available and applicable under Labor Code, and also attorneys' fees and costs.

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1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO PAY VACATION WAGES UNDER LABOR CODE § 227.3**

3 **(Against All Defendants)**

4 104. Plaintiff re-alleges and incorporates the preceding paragraphs as though set forth in
5 full herein.

6 105. California Labor Code section 227.3 provides:

7 Unless otherwise provided by a collective-bargaining agreement,
8 whenever a contract of employment or employer policy provides for
9 paid vacations, and an employee is terminated without having taken
10 off his vested vacation time, all vested vacation shall be paid to him
11 as wages at his final rate in accordance with such contract of
12 employment or employer policy respecting eligibility or time served;
13 provided, however, that an employment contract or employer policy
14 shall not provide for forfeiture of vested vacation time upon
15 termination. The Labor Commissioner or a designated representative,
16 in the resolution of any dispute with regard to vested vacation time,
17 shall apply the principles of equity and fairness.

18 106. At all relevant times during the applicable limitations period, Plaintiff and
19 Employees accrued vacation time, and/or paid time off, during their employment with
20 Defendants.

21 107. However, Defendants implemented a common policy and practice of failing to pay
22 Plaintiff and Employees for all accrued vacation wages upon separation of employment, in
23 violation of Labor Code 227.3. Further, Defendants failed to pay all accrued vacation time and/or
24 paid time off owed to Plaintiff and Class Members upon their separation from employment. In
25 addition, whenever Plaintiff and Class Members did receive payment of vacation wages or paid
26 time off, Defendants did not pay such at Plaintiff's and Employees' regular rate because
27 Defendants failed to include Plaintiff's and Employees' nondiscretionary commissions,
28 nondiscretionary bonuses, and shift differentials into payment of vacation wages or paid time off.

108. By reason of the above, Plaintiff and Employees are entitled to restitution for all
unpaid amounts due and owing to within four (4) years of the date of the filing of the original
Complaint until the date of entry of judgment.

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1 109. Plaintiff, on behalf of himself and Employees, seeks interest thereon pursuant to
2 California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and
3 reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

4 **THIRTEENTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

6 **(Against All Defendants)**

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

9 111. Plaintiff, on behalf of himself, Employees, and the Rgeneral public, brings this
10 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
11 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
12 and the general public. Plaintiff seeks to enforce important rights affecting the public interest
13 within the meaning of Code of Civil Procedure § 1021.5.

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

17 113. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
18 business practices.

19 114. Wage-and-hour laws express fundamental public policies. Paying employees their
20 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
21 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
22 to enforce minimum labor standards, to ensure that employees are not required or permitted to
23 work under substandard and unlawful conditions, and to protect law-abiding employers and their
24 employees from competitors who lower costs to themselves by failing to comply with minimum
25 labor standards.

26 115. Defendants have violated statutes and public policies. Through the conduct alleged
27 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
28 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in

1 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
2 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
3 guaranteed to all employees under the law.

4 116. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of the Business & Professions Code § 17200 *et seq.*

6 117. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
7 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
8 care should have known that their conduct was unlawful. Therefore, Defendants' conduct violates
9 the Business & Professions Code § 17200 *et seq.*

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

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

19 **FOURTEENTH CAUSE OF ACTION**

20 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

21 **(Against All Defendants)**

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

24 121. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
25 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
26 alleged violators, Defendants.

27 122. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
28 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the

1 penalty provisions, without limitation, based on the following California Labor Code sections:
2 201, 201.3, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 248.5, 510,
3 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199,
4 2698, 2699, *et seq.*, and 2802.

5 123. The penalties shall be allocated as follows: 75% to the Labor and Workforce
6 Development Agency (LWDA) and 25% to the affected employee.

7 124. Employees also seek any and all penalties and remedies set forth in Labor Code §
8 558, which states:

9 (a) Any employer or other person acting on behalf of an employer who violates,
10 or causes to be violated, a section of this chapter or any provision regulating
11 hours and days of work in any order of the Industrial Welfare Commission
12 shall be subject to a civil penalty as follows: (1) For any initial violation,
13 fifty dollars (\$50) for each underpaid employee for each pay period for
14 which the employee was underpaid in addition to an amount sufficient to
15 recover underpaid wages. (2) For each subsequent violation, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for which
17 the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages. (3) Wages recovered pursuant to this section shall be paid
19 to the affected employee.

20 (b) If upon inspection or investigation the Labor Commissioner determines that
21 a person had paid or caused to be paid a wage for overtime work in violation
22 of any provision of this chapter, or any provision regulating hours and days
23 of work in any order of the Industrial Welfare Commission, the Labor
24 Commissioner may issue a citation. The procedures for issuing, contesting,
25 and enforcing judgments for citations or civil penalties issued by the Labor
26 Commissioner for a violation of this chapter shall be the same as those set
27 out in Section 1197.1.

28 (c) The civil penalties provided for in this section are in addition to any other
civil or criminal penalty provided by law.

125. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
for each violation in a subsequent citation, for which the employer fails to provide the employee a
wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

126. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on January 3, 2024. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
5. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
6. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
7. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
9. For penalties pursuant to Labor Code § 226.3, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

- 1 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
- 2 14. For compensatory damages pursuant to Labor Code § 2802 in the amount of all
- 3 previously unreimbursed business expenditures necessarily incurred by Employees in the
- 4 discharge of their job duties for Defendants from four (4) years prior to the original filing of this
- 5 action, as may be proven;
- 6 15. For compensatory damages in the amount equal to the sick hours used by
- 7 Employees, at the Employees' regular rates of pay;
- 8 16. For penalties and compensatory damages in the amount equal to the proper rate of
- 9 pay for work beyond the sixth consecutive day for at least six hours a day or for over 30 hours
- 10 total;
- 11 17. For penalties and compensatory damages for Defendants violations of Labor Code
- 12 §§ 212 and 213;
- 13 18. For compensatory damages in the amount equal to the vacation or paid time off
- 14 hours earned and not paid out to Employees at their proper regular rates when used and upon
- 15 separation of employment;
- 16 19. For an order enjoining Defendants and their agents, servants, and employees, and
- 17 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
- 18 duties adumbrated in this Complaint;
- 19 20. For all general, special, and incidental damages as may be proven;
- 20 21. For an award of pre-judgment and post-judgment interest;
- 21 22. For an award providing for the payment of the costs of this suit;
- 22 23. For an award of attorneys' fees; and
- 23 24. For such other and further relief as this Court may deem proper and just.

24 DATED: March 8, 2024

D.LAW, INC.

25
26 By


Emil Davtyan
David Yeremian
Roman Shkodnik
Robert Payaslyan
Attorneys for Plaintiff PETER GERTZ
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: March 8, 2024

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Roman Shkodnik
Robert Payaslyan
Attorneys for Plaintiff PETER GERTZ
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

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[X] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes