

Molly DeSario, Esq. (SBN 230763)
molly.desario@wilshirelawfirm.com
James Yoo, Esq. (SBN 310680)
james.yoo@wilshirelawfirm.com
Ruby Carrera, Esq. (SBN 343745)
ruby.carrera@wilshirelawfirm.com
Pavel Rukavishnikov, Esq. (SBN 357588)
pavel.rukavishnikov@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff JOSE SOTELO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JOSE SOTELO, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

v.

ANTICIMEX CALIFORNIA, INC., a Delaware
Corporation; CORKY'S PEST CONTROL,
INCORPORATED, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
2/13/2025 2:34:50 PM

Clerk of the Superior Court
By G. Lopez, Deputy Clerk

Case No.: 24CU025225C

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

1. Failure to Pay Minimum and Straight Time Wages (Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Lab. Code §§ 226.7);
5. Failure to Indemnify Employees for Expenditures (Lab. Code § 2802);
6. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
7. Failure to Timely Pay Final Wages at Termination (Lab. Code §§ 201-203);
8. Failure to Timely Pay Wages During Employment (Lab. Code § 204)
9. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.); and
10. Civil Penalties Under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff JOSE SOTELO (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, individually and on behalf of all other members of the public similarly situated,
4 alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff is a California resident who worked for Defendant ANTICIMEX
7 CALIFORNIA, INC.; CORKY’S PEST CONTROL, INCORPORATED; and DOES 1 through 10
8 (“Defendants”) in California as a nonexempt employee paid hourly from approximately February
9 2020 through October 2024.

10 2. Plaintiff reserves the right to seek leave to amend this complaint to add new
11 Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
12 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law, as
13 well as to add additional claims.

14 3. Plaintiff alleges, on information and belief, that Defendants are, and at all times
15 herein mentioned, were:

- 16 (a) Business entities qualified to do business and actually conducting business
17 in numerous counties throughout the State of California, including in San
18 Diego County; and,
19 (b) The former employers of Plaintiff and the current and/or former employer
20 of the Class Members because Defendants engaged Plaintiff and the Class
21 to work; and/or suffered and permitted Plaintiff and the Class to work, and/or
22 controlled or had the power and authority to control their wages, hours, or
23 working conditions.

24 4. At all relevant times, Defendants were and are legally responsible for all of the
25 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
26 foregoing paragraphs as the employer of Plaintiff and of the Class. Further, Defendants are
27 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
28 “respondeat superior.”

6. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Class in the State of California.

7. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter because Plaintiff brings this Complaint for various violations of the Labor Code (including a claim pursuant to the Private Attorney General Act of 2004) and California Industrial Welfare Commission (“IWC”) orders, Defendants are business entities operating in California, and Plaintiff is a California resident.

9. This class action is brought pursuant to California Code of Civil Procedure section

382. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

10. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the County of San Diego, California.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

11. Plaintiff worked for Defendants in California as a non-exempt employee and was paid hourly. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff often worked more than eight hours per day and forty (40) hours in a workweek.

12. Plaintiff brings this action against Defendants for Labor Code violations and unfair business practices stemming from Defendants' failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide legally compliant meal periods, failure to authorize and permit rest periods, failure to reimburse business expenses, failure to furnish accurate wage statements, and failure to pay final wages at termination. Defendants' supervisors also engaged in systematic and widespread altering of time records to hide Labor Code violations. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative of the class.

13. Plaintiff brings the First through Ninth Causes of Action individually and as a class action on behalf of himself and certain current and former employees of Defendants (hereinafter collectively referred to as the "Class" or "Class Members," and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

14. Plaintiff brings the Tenth Cause of Action as a representative action under the Labor Code Private Attorneys Act of 2004, Labor Code sections 2698 et seq. ("PAGA") to recover civil penalties that are owed to Plaintiff, the State of California, and past and present non-exempt employees employed by Defendants in the State of California during the statute of limitations period for their PAGA claim (herein after referred to as the "Aggrieved Employees").

15. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including San Diego County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the Labor Code, Wage Orders issued by the IWC, and the California Business & Professions Code.

16. Despite these requirements, throughout the statutory period, Defendants willfully failed to comply with the Labor Code and IWC Wage Orders with respect to Plaintiff and the Class and instead maintained a systematic, company-wide policy and practice of including, but not limited to, the following violations on a regular basis:

(a) Failing to pay employees for all hours worked, including minimum, straight time, and overtime wages. For example, Defendants:

- 1) required employees to perform work off-the-clock, without compensation, including, but not limited to, filling up the work vehicles with gasoline, handling work related communications, and preparing routes for the following day, as well as having to perform additional job duties after clocking out; and/or
- 2) failed to pay for all hours worked and failed to pay some of this unpaid work at the overtime rate, as required; and/or
- 3) required them to continue working during unpaid meal and rest periods; and/or
- 4) failed to maintain accurate records of the hours worked.

(b) Failing to provide employees with timely and duty-free meal periods; for example, Defendants:

- 1) required employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work; and/or
- 2) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks, which could not be

completed without working in lieu of taking mandatory meal periods;
and/or

- 3) interrupted Plaintiff's meal periods; and/or
- 4) denied employees permission to take a meal period; and/or
- 5) failed to maintain accurate records of all meal periods taken or missed and denied employees opportunities to do their own timekeeping by instructing employees to enter inaccurate start and end times for the alleged meal periods.

(c) Failing to authorize and permit employees to take timely and duty-free rest periods. For example, Defendants:

- 1) required employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours); and/or
- 2) failed to compensate employees for rest periods that were not authorized or permitted; and/or
- 3) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods.

(d) Failing to indemnify employees for work-related expenses, such as having to use Plaintiff's personal cell phone for work-related communications, and requiring the purchase of steel toed boots, all without reimbursement.

(e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the Labor Code and IWC Wage Orders, such as, rest/meal break premiums, , and all wages for all hours worked, among other things.

(f) Failing to timely pay employees their final wages due upon separation of employment, including, but not limited to, all expenditures, minimum

wages, straight time wages, overtime wages, meal and rest period premium wages.

- (g) Falsifying and/or altering time records to avoid paying all hours worked, overtime rates, and meal and rest break penalties as required Lab. Code §§1174(d), and 1198, and 204.

17. On information and belief, Defendants, and each of them, were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

18. As a result of these violations of Labor Code § 226(a), Plaintiff and the Class suffered injury because, among other things:

- (a) the violations led them to believe that they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they were entitled;
- (b) the violations led them to believe that they had been paid the minimum, straight time, and overtime wages, even though they had not been;
- (c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were entitled;
- (d) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (e) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(f) by understating the wages truly due to them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits; and,

(g) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled.

19. Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code § 226(e) and injunctive relief under Labor Code § 226(h).

CLASS ACTION ALLEGATIONS

20. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure section 382.

21. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

22. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending on the first day of trial in this matter.

23. At all material times, Plaintiff was a member of the Class.

24. Plaintiff undertook this concerted activity to improve the wages and working conditions of all Class Members.

25. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than one hundred (100)

1 individuals and the identity of such membership is readily ascertainable by
2 inspection of Defendants' records.

3 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
4 the interests of each Class Member with whom there is a shared, well-
5 defined community of interest, and Plaintiff's claims are typical of all Class
6 Members' claims as demonstrated herein.

7 (c) Adequacy: Plaintiff is qualified to, and will, fairly, and adequately protect
8 the interests of each Class Member with whom there is a shared, well-
9 defined community of interest and typicality of claims, as demonstrated
10 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
11 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
12 rules governing class action discovery, certification, and settlement.
13 Plaintiff has incurred, and throughout the duration of this action, will
14 continue to incur costs and attorneys' fees that have been, are, and will be
15 necessarily expended for the prosecution of this action for the substantial
16 benefit of each class member.

17 (d) Superiority: A Class action is superior to other available methods for the
18 fair and efficient adjudication of the controversy, including consideration of:

- 19 1) The interests of the members of the Class in individually controlling
20 the prosecution or defense of separate actions;
- 21 2) The extent and nature of any litigation concerning the controversy
22 already commenced by or against members of the Class;
- 23 3) The desirability or undesirability of concentrating the litigation of the
24 claims in the particular forum; and,
- 25 4) The difficulties likely to be encountered in the management of a class
26 action.

27 (e) Public Policy Considerations: The public policy of the State of California is
28 to resolve the Labor Code claims of many employees through a class action.

Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the Class Members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

26. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to indemnify Class Members for expenditures
- (e) Failed to provide Class Members with accurate wage statements;
- (f) Failed to provide Class Members with timely final wages; and,
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

27. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all

members of the class before the Court;

- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or,
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

28. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice,

1 website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class
2 and deemed necessary and/or appropriate by the Court.

3 **FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Failure to Pay Minimum and**
5 **Straight Time Wages for All Hours Worked)**

6 29. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
7 paragraphs.

8 30. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1,
9 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
10 to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
11 Compensable work time is defined in the IWC Wage Orders as “the time during which an
12 employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.”

14 31. At all relevant times herein mentioned, Defendants knowingly failed to pay Plaintiff
15 and the Class compensation for all hours they worked. For example, after Plaintiff clocked out and
16 without receiving the proper compensation, he was often required to fill the company vehicle with
17 gasoline, handle work related communications, and prepare routes for the following day. This
18 resulted in Plaintiff often working approximately one (1) hour per day off-the-clock and without
19 any overtime or premium pay. Further, Defendants also required Plaintiff to perform work during
20 uncompensated meal periods and rest periods. By their failure to pay compensation for each hour
21 worked as alleged above, Defendants willfully violated the provisions of Labor Code § 1194, and
22 any additional applicable Wage Orders that require such compensation to non-exempt employees.

23 32. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight
24 time wages for all non-overtime hours worked for Defendants.

25 33. By and through the conduct described above, Plaintiff and the Class have been
26 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

27 34. By virtue of the Defendants’ unlawful failure to pay additional compensation to
28 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class

suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class and which will be ascertained according to proof at trial.

35. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

36. Pursuant to Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

37. Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

38. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Wages)

39. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

40. California Labor Code §§510, 1194 and 1198 require employers to pay at least minimum wage for all hours worked, pay overtime wages payable at the rate of at least one and one-half times the regular rate of pay for more than eight hours in one workday or more than forty hours in one workweek. Employees are entitled to double overtime wages payable at the rate of at least twice the regular rate of pay for work in excess of twelve hours in one workday or work in excess of eight hours on any seventh day of work in a single workweek.

41. At all times relevant to this Complaint, Plaintiff and the Class were non-exempt employees and regularly worked more than eight hours in a workday and/or more than forty (40)

1 hours in a workweek and were entitled to the protections of California Labor Code §§ 510, 1194,
2 and the applicable IWC Wage Order. Defendants failed to compensate Plaintiffs for all overtime
3 hours worked as required under the foregoing provision of the California Labor Code and IWC
4 Wage Order by, among other things: failing to pay overtime at one and one-half or double the
5 regular rate of pay; requiring, permitting or suffering Plaintiff to work off the clock, requiring,
6 permitting or suffering Plaintiff to work through meal and rest breaks but not compensating him
7 for this time and failing to include this time in his hours worked; illegally and inaccurately
8 recording time in which Plaintiff worked; and failing to properly maintain Plaintiff's records;

9 42. By virtue of Defendants' unlawful failure to pay additional premium rate
10 compensation to Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class
11 have suffered, and will continue to suffer, damages in amounts which are presently unknown to
12 them but which exceed the jurisdictional minimum of this Court and which will be ascertained
13 according to proof at trial.

14 43. By failing to keep adequate time records required by Labor Code § 1174(d),
15 Defendants have made it difficult to calculate the full extent of overtime compensation due to
16 Plaintiff and the Class.

17 44. Plaintiff and the Class also request recovery of overtime compensation according to
18 proof, interest, attorneys' fees and costs pursuant to Labor Code § 1194(a), as well as the
19 assessment of any statutory penalties against Defendants, in a sum as provided by the Labor Code
20 and/or other statutes.

21 45. Labor Code § 204 requires employers to provide employees with all wages due and
22 payable twice a month. The Wage Orders also provide that every employer shall pay to each
23 employee, on the established payday for the period involved, overtime wages for all overtime hours
24 worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all
25 compensation due, in violation of Labor Code § 204.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

46. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

47. California law requires an employer to provide an employee an uninterrupted meal period of no less than thirty minutes before the end of a five-hour work period during which employees are relieved of all duties. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours in one day. (Lab. Code §§ 226.7, 512; Wage Orders, 11; *Brinker Restaurant Corp v. Superior Ct.* (2012) 53 Cal.4th 1004, 1049.) The Wage Order's meal period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. (*Brinker Restaurant Corp. v. Superior Court, supra*, at 1036.) An employer must relinquish control over their activities, permit a reasonable opportunity to take an uninterrupted 30-minute break, and not impede or discourage an employee from taking a meal break. (*Id.* at p. 1040.) If the employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. (*Id.* at p. 1035.) “An employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. (*Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 962–963; see also *Jaimez v. Daiohs USA, Inc.*, (2010) 181 Cal.App.4th 1286, 1304–1305 [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC* (S.D.Cal. 2010) 267 F.R.D. 625, 638 [indicating informal anti-meal-break policy “enforced through ‘ridicule’ or ‘reprimand’” would be illegal].) The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forgo, or otherwise encouraging the skipping of legally protected breaks.” (*Id.* at p. 1040.)

48. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one hour of pay at the employee’s regular rate of pay for each workday that a legally required meal period was not timely provided or was not duty-free. (Lab. Code §226.7(c)). The California Supreme Court held that premium pay for denying an employee

1 a meal or rest break constitutes “wages.” (*Naranjo v Spectrum Security Services, Inc.* (2022) 13
2 Cal.5th 93.)

3 49. Defendants regularly failed to provide Plaintiff and the Class timely full thirty-minute
4 meal periods for each five-hour period of work as required under the foregoing provisions of the
5 California Labor Code and IWC Wage Order. For example, Plaintiff’s meal breaks were frequently
6 delayed and often interrupted. In fact, Mr. Sotelo’s supervisors repeatedly instructed him to clock
7 out for his meal break before the end of his fifth hour of work, continue working, and take his meal
8 break after the fact to conceal his untimely meal break. Defendants engaged in the illegal practice
9 of altering timekeeping records by instructing Plaintiff to clock out while remaining on shift and
10 thus did not reflect the accurate hours worked and meal breaks taken. By their failure to permit
11 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
12 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
13 Defendants willfully violated the provisions of Labor Code § 226.7 and the applicable Wage
14 Orders.

15 50. Under California law, Plaintiff and the Class are entitled to be paid one hour of
16 additional wages for each workday they were not provided with all required meal period(s), plus
17 interest thereon.

18 **FOURTH CAUSE OF ACTION**

19 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

20 51. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
21 paragraphs.

22 52. California Labor Code §226.7 and the applicable Industrial Welfare Commission Order
23 §12 requires that employers must provide employees timely, uninterrupted 10-minute rest breaks,
24 free of all duty, for every 4 hours worked or major fraction thereof. If an employer fails to provide
25 an employee a rest break in accordance with the applicable provisions of this order, the employer
26 shall pay the employee one hour of pay at the employee’s regular rate of compensation for each
27 workday that the rest break is not provided as a rest break premium wage. Employees are entitled
28 to a 10-minute rest break for shifts from three and one-half to six hours in length, 20 minutes for

1 shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14
2 hours, and so on.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.)
3 Furthermore, “Employers must relieve employees of all duties and relinquish control over how
4 employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2
5 Cal.5th 257, 269.) This obligation includes allowing employees to leave the premises during their
6 rest periods.

7 53. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
8 Class to take rest breaks, regardless of whether employees worked more than four hours in a
9 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
10 alleged above (or due to the fact that Defendants made it impossible or impracticable to take these
11 uninterrupted rest periods), Defendants willfully violated the provisions of Labor Code § 226.7
12 and the applicable Wage Orders.

13 54. Under California law, Plaintiff and the Class are entitled to be paid one hour of
14 premium wages rate for each workday they were not provided with all required rest break(s), plus
15 interest thereon.

16 **FIFTH CAUSE OF ACTION**

17 **(Against All Defendants for Failure to Indemnify Employees for Expenditures)**

18 55. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
19 paragraphs.

20 56. As set forth above, Plaintiff and the Class were required to incur substantial
21 necessary expenditures and losses in direct consequence of the discharge of their duties or of their
22 obedience to directions of Defendants.

23 57. Defendants violated Labor Code § 2802, by failing to pay and indemnify Plaintiff
24 and the Class for necessary expenditures and losses incurred in direct consequence of the discharge
25 of their duties or of their obedience to directions by Defendants, including, but not limited to, the
26 use of Plaintiff’s personal cell phone for work-related communications and purchase of steel toed
27 boots, all without reimbursement.

SIXTH CAUSE OF ACTION

**(Against All Defendants for Failure to Provide and Maintain
Accurate and Compliant Wage Records)**

60. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

1 legal right to receive, and their protected interest in receiving, accurate, itemized wage statements
2 under Labor Code § 226(a).

3 65. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
4 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
5 a result of having to bring this action to attempt to obtain correct wage information following
6 Defendants' refusal to comply with many of the mandates of California's Labor Code and related
7 laws and regulations.

8 66. Plaintiff and the Class are entitled to recover from Defendants the greater of their
9 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an aggregate
10 penalty not exceeding four thousand dollars (\$4,000) per employee.

11 67. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
12 attorney's fees and costs to ensure compliance with this section, pursuant to Labor Code § 226(h).

13 **SEVENTH CAUSE OF ACTION**

14 **(Against All Defendants for Failure to Pay Wages of**
15 **Discharged Employees – Waiting Time Penalties)**

16 68. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
17 paragraphs.

18 69. At all times herein set forth, Labor Code §§ 201 and 202 provide that, if an employer
19 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
21 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee
22 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 70. Within the applicable statute of limitations, the employment of many other members
25 of the Class ended, i.e., was terminated by quitting or discharge, and the employment of other
26 members will be. However, during the relevant time period, Defendants failed, and continue to
27 fail to pay terminated Class Members, without abatement, all wages required to be paid by Labor
28

Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

71. Defendants' failure to pay those Class Members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code §§ 201 and 202.

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

73. The Class is entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

74. Pursuant to Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

EIGHTH CAUSE OF ACTION

(Against All Defendants for Failure to Timely Pay Wages During Employment)

75. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

76. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiff and class members during their employment.

77. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

78. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any

1 calendar month, other than those wages due upon termination of an employee, are due and payable
2 between the first (1st) and the tenth (10th) day of the following month.

3 79. At all times relevant herein, Labor Code section 204 provides that all wages earned for
4 labor in excess of the normal work period shall be paid no later than the payday for the next regular
5 payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that
6 the requirements of this section are deemed satisfied by the payment of wages for weekly,
7 biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days
8 following the close of the payroll period.

9 80. During the relevant time period, Defendants willfully failed to pay Plaintiff and class
10 members all wages due including, but not limited to, overtime wages, minimum wages, and/or
11 meal and rest period premiums, within the time periods specified by California Labor Code section
12 204.

13 81. Defendants' failure to pay Plaintiff and class members all wages due violates Labor
14 Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants
15 the statutory penalty wages pursuant to California Labor Code section 210.

16 **NINTH CAUSE OF ACTION**

17 **(Against All Defendants for Violations of California** 18 **Business & Professions Code §§ 17200, et seq.)**

19 82. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
20 paragraphs.

21 83. Defendants, and each of them, are "persons" as defined under California Business
22 & Professions Code § 17201.

23 84. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
24 unlawful, and harmful to Plaintiff, other Class Members, and to the general public. Plaintiff seeks
25 to enforce important rights affecting the public interest within the meaning of Code of Civil
26 Procedure § 1021.5.

27 85. Defendants' activities, as alleged herein, are violations of California law, and
28 constitute unlawful business acts and practices in violation of California Business & Professions

Code §§ 17200, et seq.

86. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described above in the foregoing causes of action are unlawful and in violation of public policy; and are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, et seq.

87. By and through their unfair, unlawful, and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and has deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

88. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

89. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

90. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to, and does, seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

91. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,

1 individually, and on behalf of members of the putative Class, has suffered and will continue to
2 suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to
3 engage in said unfair, unlawful and/or fraudulent business practices.

4 92. Plaintiff also alleges that, if Defendants are not enjoined from the conduct set forth
5 herein above, they will continue to avoid paying the appropriate taxes, insurance, and other
6 withholdings.

7 93. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and
8 putative Class Members are entitled to restitution of the wages withheld and retained by
9 Defendants during a period that commences four years prior to the filing of this complaint; a
10 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class
11 Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and
12 other applicable laws; and an award of costs.

13 **TENTH CAUSE OF ACTION**

14 **(By Plaintiff Against All Defendants for Civil Penalties Under the Private Attorneys** 15 **General Act of 2004, Cal. Lab. Code § 2698, et seq.)**

16 94. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above
17 paragraphs.

18 95. At all times herein mentioned, Defendants were subject to the Labor Code of the State
19 of California and the applicable Industrial Welfare Commission Orders.

20 96. California Labor Code § 2699(a) specifically provides for a private right of action to
21 recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law,
22 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
23 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
24 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
25 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
26 former employees pursuant to the procedures specified in Section 2699.3."

27 97. On December 4, 2024, Plaintiff gave written notice by online filing pursuant to
28 California Labor Code § 2699.3 to the Labor and Workforce Development Agency and by certified

mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiff's PAGA case number is LWDA-CM-1064991-24 (*Jose Sotelo v. Anticimex California Incorporated; Corky's Pest Control, Incorporated*). More than 65 days passed, and The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Plaintiff hereby commences a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

98. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of Plaintiff, the State of California, and similarly situated Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

99. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

CLASS CERTIFICATION

1. That this action be certified as a class action with respect to all of its causes of action;
2. That Plaintiff be appointed as the representative of the Class; and,
3. That counsel for Plaintiff be appointed as Class Counsel.

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AS TO THE FIRST CAUSE OF ACTION

4. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and Class Members;

5. For general unpaid wages and such general and special damages as may be appropriate;

6. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

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

8. For liquidated damages pursuant to California Labor Code section 1194.2; and

9. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE SECOND CAUSE OF ACTION

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

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

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

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

14. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE THIRD CAUSE OF ACTION

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and Class Members;

16. That the Court make an award to the Plaintiff and Class Members of one (1) hour

of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

17. For all actual, consequential, and incidental losses and damages, according to proof;

18. For premiums pursuant to California Labor Code section 226.7(c);

19. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

20. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

21. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE FOURTH CAUSE OF ACTION

22. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

23. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

24. For all actual, consequential, and incidental losses and damages, according to proof;

25. For premiums pursuant to California Labor Code section 226.7(c);

26. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

27. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

28. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE FIFTH CAUSE OF ACTION

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

30. For unpaid business-related expenses and such general and special damages as may be appropriate;

31. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

34. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE SIXTH CAUSE OF ACTION

35. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

37. For injunctive relief pursuant to California Labor Code section 226(h);

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

39. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1);
and

40. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE SEVENTH CAUSE OF ACTION

41. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

42. For all actual, consequential and incidental losses and damages, according to proof;

43. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

44. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

45. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,

1 or as otherwise provided by law; and

2 46. For such other and further relief as the Court may deem equitable and appropriate.

3 **AS TO THE EIGHTH CAUSE OF ACTION**

4 47. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
6 wages, minimum wages, meal and rest period premiums, and/or sick leave pay during their
7 employment;

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

9 49. For statutory penalties according to proof pursuant to California Labor Code section
10 210;

11 50. For pre-judgment interest on any unpaid wages from the date such amounts were
12 due, or as otherwise provided by law;

13 51. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5,
14 or as otherwise provided by law; and

15 52. For such other and further relief as the Court may deem equitable and appropriate.

16 **AS TO THE NINTH CAUSE OF ACTION**

17 53. That the Court declare, adjudge, and decree that Defendants violated California
18 Business & Professions Code §§ 17200, et seq. by failing to provide Plaintiff and class members
19 all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages
20 due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize
21 and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class
22 members accurate and complete wage statements, failing to maintain accurate payroll records for
23 Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages
24 during employment, and failing to reimburse Plaintiff and class members for business-related
25 expenses, constitutes an unlawful business practice in violation of California Business and
26 Professions Code sections 17200, et seq.;

27 54. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment
28 interest from the day such amounts were due and payable;

1 55. For the appointment of a receiver to receive, manage and distribute all funds
2 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
3 result of violations of California Business & Professions Code §§ 17200 et seq.; and

4 56. For injunctive relief to ensure compliance with this section, pursuant to California
5 Business & Professions Code §§ 17200, et seq.

6 **AS TO THE TENTH CAUSE OF ACTION**

7 57. That the Court declare, adjudge and decree that Defendants violated the California
8 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
9 overtime), failing to provide meal periods and pay the correct amount of meal period premium
10 wages, failing to authorize and permit rest periods and pay the correct amount of rest period
11 premium wages, failing to pay all earned wages twice per month, failing to maintain accurate
12 records of hours worked and meal periods, failing to pay all final wages to terminated employees,
13 failing to furnish accurate wage statements, and failure to indemnify employees for necessary
14 business expenditures;

15 58. For all actual, consequential and incidental losses and damages, according to proof;

16 59. For all civil penalties pursuant to California Labor Code §§ 2699, et seq., and all
17 other applicable Labor Code provisions;

18 60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
19 Labor Code § 2699; and,

20 61. For such other and further relief as the Court may deem equitable and appropriate.

21 **AS TO ALL CAUSES OF ACTION**

22 62. For pre-judgment interest on any unpaid compensation commencing from the date
23 such amounts were due or as provided by law;

24 63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure § 1021.5 and/or Labor Code § 1194(a) and/or Labor Code §
26 2699(g) or as otherwise provided by law as to all causes of action that allow recovery of attorney's
27 fees;
28

65. For such other and further relief as the Court may deem equitable and appropriate.

Dated: February 12, 2025

m. desario

Molly DeSario, Esq.
James Yoo, Esq.
Ruby Carrera, Esq.
Pavel Rukavishnikov, Esq.

Attorneys for Plaintiff