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

13 FREDDIE SOLIS, on behalf of himself and
14 others similarly situated and aggrieved,

15 Plaintiff,

16 vs.

18 NEUTRON HOLDINGS, INC., dba LIME, a
19 Delaware Corporation; WMBE
20 PAYROLLING, INC., dba TARGETCW, a
21 California Corporation; and DOES 1 through
22 50, inclusive,

22 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Chelsea Martinez, Deputy Clerk

Case No.: 37-2020-00015614-CU-OE-CTL

REPRESENTATIVE COMPLAINT FOR
VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, *et seq.*

JURY TRIAL DEMANDED

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2. On information and belief, Defendants NEUTRON HOLDINGS, INC., dba LIME, Ware Corporation, and WMBE PAYROLLING, INC., dba TARGETCW, a California corporation, are duly licensed to conduct business in the State of California.

4. This court possesses original subject matter jurisdiction over this matter. Venue is in this judicial district because Defendant maintains its principal place of business in this district, and some of the complained of conduct occurred in this judicial district.

6. During the period beginning one-year period preceding the filing of the required notice with the Labor Workforce and Development Agency, and continuing through the , as alleged herein, Defendant violated Labor Code sections 201-203, 204, 216, 221-223, 26.7, 245-248.5, 432.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810.5, and all applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by

1 Defendant as “mechanics.” These violations subject Defendant to civil penalties as set forth in
2 the foregoing statutes as well as other provisions of the Labor Code, including without
3 limitation Labor Code sections 210, 558, 1174.5, 1197.1 and 2699.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 7. Plaintiff exhausted his administrative remedies to recover penalties on behalf of
6 himself and other similarly situated aggrieved employees pursuant to the Private Attorney General
7 Act (“PAGA”), as codified in Labor Code Section 2698, *et seq.* Plaintiff provided timely notice of
8 the violations via certified mail to the Labor Workforce and Development Agency (“LWDA”) and
9 to all named Defendants on or about January 31, 2020. Plaintiff complied with all other exhaustion
10 requirements. As of April 5, 2020, Plaintiff and his attorneys have not received any notice from
11 the LWDA of its intent to investigate any of the charges or violations as contained therein.
12 Moreover, Defendants have not cured nor provided any notice of its intent to cure the Labor Code
13 violations within thirty-three days of receipt of notice.

14 **GENERAL ALLEGATIONS**

15 8. During four-year period preceding filing of this complaint, Plaintiff and each of the
16 aggrieved employees worked for Defendants in the State of California as “mechanics” or other
17 similar titles. At all relevant times, Defendants treated Plaintiff and the aggrieved employees as
18 independent contractors rather than employees.

19 9. While Plaintiff and the aggrieved employees worked for Defendants as mechanics,
20 Plaintiff and the aggrieved employees were actually employees under California law, in that: (1) they
21 were not free from Defendants’ control and direction in the performance of the work, both under
22 the contract for the performance of the work and in fact; (2) the work performed was entirely within
23 the usual course of the Defendants’ business; and (3) at no time were Plaintiff or the aggrieved
24 employees customarily engaged in an independently established trade, occupation, or business of
25 the same nature as the work they performed for Defendants.

26 10. Plaintiff and the aggrieved employees typically worked 12 or more hours per day, 6
27 days a week, and occasionally 7 days a week. Because Defendants improperly classified Plaintiff
28 and the aggrieved employees as independent contractor rather than as an employees, they were not
properly and fully compensated for all hours worked, as they were not paid for all hours worked

1 such as rest breaks, and other non-productive time.

2 11. Defendants also did not provide Plaintiff and the aggrieved employees with a duty-
3 free, uninterrupted thirty-minute meal periods when they worked more than five and 10 hours in a
4 workday. Despite failing to provide Plaintiff and the class members with meal breaks, Defendants
5 did not pay required premium wages in violation of California law.

6 12. Similarly, Defendants did not provide Plaintiff and the aggrieved employees with
7 required rest breaks, or with compensation in lieu thereof, as required by California law.

8 13. Plaintiff and the aggrieved employees also were required to use their own tools
9 including but not limited to: oils, drills, pliers, wire cutters, but Defendants failed to reimburse them
10 for use of personal tools and other reasonably necessary business expenses.

11 14. Due to the aforementioned violations and Defendants' faulty recordkeeping, Plaintiff
12 and aggrieved employees were not, nor could they be, provided with accurate and itemized wage
13 statements.

14 15. As a result, Plaintiff and aggrieved employees are also owed derivate waiting time
15 penalties for Defendants' failure to pay all wages upon termination, or within 72 hours of
16 resignation. As a result of these unlawful policies and the failure to provide appropriate breaks,
17 failure to pay overtime, regular, and minimum wages, Defendants also failed to maintain accurate
18 time records and provide Plaintiff and aggrieved employees with correct and accurate itemized
19 paystubs as required by Labor Code Section 226 and the pertinent wage order.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**

22 **LABOR CODE SECTIONS 2698, *et seq.***

23 16. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
24 15.

25 17. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
26 Plaintiff and similarly aggrieved employees with one 30-minute meal break free from all duties for
27 all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts
28 longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1)

1 if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
2 required meal period may be waived by mutual consent of the employer and employee, and (2) if
3 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
4 the required second meal period may be waived by mutual consent of the employer and employee,
5 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
6 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
7 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
8 period, it is presumed no meal period was provided.

9 18. Plaintiff and similarly aggrieved employees regularly worked periods of more than
10 five hours in a workday without being provided a mandatory thirty-minute, duty-free meal period,
11 and regularly worked periods of more than ten and/or twelve hours in a workday without being
12 provided a mandatory second thirty-minute, duty-free meal period. While Defendant purported to
13 offer one thirty-minute meal break per shift and would require Plaintiff and similarly aggrieved
14 employees to "clock out" for a single thirty (30) minute meal break per shift, those meal breaks did
15 not comply with California law because they were typically interrupted or cut short, and Plaintiff
16 and similarly aggrieved employees were prohibited from leaving the work site during their meal
17 breaks. Defendant did not otherwise meet the requirements imposed by the Wage Order regarding
18 employees working on-duty meal periods without penalty. Defendant also failed to pay Plaintiff
19 and similarly aggrieved employees an additional hour of wages at their regular rates of pay for each
20 workday a meal period was not provided.

21 19. Defendant failed to provide Plaintiff and similarly aggrieved employees all required
22 and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies
23 and procedures that ensured Plaintiff and similarly aggrieved employees would not receive all
24 legally required rest periods, as Defendant did not authorize and permit all required rest periods in
25 strict accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.
26 Defendant similarly employed policies and procedures that rendered rest breaks non-compliant with
27 the requirements of California law by, inter alia, failing to relieve Plaintiff and similarly aggrieved
28 employees of all duties and all employer control. Defendant further employed policies and

1 procedures ensuring Plaintiff and similarly aggrieved employees did not receive premium wages to
2 compensate them for workdays they did not receive all legally required and fully compliant rest
3 periods.

4 20. California law provides employees in California must be paid for all hours worked,
5 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
6 California law also provides employees in California must be paid overtime, equal to 1.5 times the
7 employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Plaintiff
8 and similarly aggrieved employees regularly worked hours, including overtime hours, for which
9 they were not compensated by Defendant as required by California law, including time spent
10 performing work during uncompensated meal periods. By requiring Plaintiff and similarly
11 aggrieved employees to perform "off the clock" work without counting such time as hours worked
12 and without compensating Plaintiff and all similarly aggrieved employees for such "off the clock"
13 work, Defendant violated Labor Code sections 1194-1199, and Wage Order 4-2001, as to Plaintiff
14 and all similarly aggrieved employees. These violations subject Defendant to civil penalties under
15 the foregoing Labor Code sections and other applicable Labor Code sections, including without
16 limitation Labor Code sections 558, 1197.1 and 2699. Each violation of each Labor Code section
17 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

18 21. California law provides that, at the time of each payment of wages, the employer must
19 provide each employee with an itemized statement showing, inter alia, gross wages earned, total
20 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is
21 being paid, the employee's name and last four digits of their social security number, the name and
22 address of the legal entity that it is the employer, and all applicable hourly rates in effect during the
23 pay period and all hours worked at each rate. Defendant knowingly and intentionally failed to
24 provide Plaintiff and other aggrieved employees with proper, itemized wage statements as the wage
25 statements provided by Defendant do not accurately reflect, inter alia, gross wages earned, total
26 hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and
27 all hours worked at each applicable hourly rate. Notably, Defendant's wage statements fail to list
28 the overtime and double time rates of pay accurately. Accordingly, Defendant has violated Labor

1 Code section 226 as to Plaintiff and all similarly aggrieved employees. These violations subject
2 Defendant to civil penalties under the Labor Code, including without limitation Labor Code sections
3 226 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
4 aggrieved employee, results in a separate civil penalty.

5 22. California law requires employers to keep “accurate and complete” payroll records
6 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
7 Order 5-2001, section 7, similarly requires employers to keep time records showing, inter alia, when
8 the employees begin and end each work period. At all relevant times, Defendant has failed, and
9 continues to fail, to keep the required time records, as Defendant did not provide and/or record all
10 of Plaintiff’s and other similarly aggrieved employees time spent performing their job duties sine
11 they were misclassified as independent contractors. Defendant’s failure to keep “accurate and
12 complete” payroll records for Plaintiff and other similarly aggrieved employees violates Labor Code
13 sections 1174, 1198-99, and Wage Order 4-2001, section 7. These violations subject Defendant to
14 civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699. Each
15 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
16 results in a separate civil penalty.

17 23. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
18 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
19 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections
20 1174, 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with respect to
21 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
22 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
23 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
24 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
25 penalty.

26 24. California Labor Code section 204 requires an employer to pay employees all wages
27 due and payable at least twice each calendar month. Defendant failed to comply with Labor Code
28 section 204 by failing to timely pay twice during each calendar month all wages due and payable to

1 Plaintiff and other similarly aggrieved employees. Defendant's violations of Labor Code section
2 204 subject Defendant to civil penalties, including but not limited to the penalties set forth in
3 California Labor Code sections 210 and 2699. Each violation results in a separate civil penalty, for
4 each aggrieved employee for each pay period during which the statutory provisions were violated.

5 25. Labor Code section 201 requires employers to pay all wages earned and unpaid at the
6 time of discharge, immediately upon discharge. Labor Code section 202 states similar provisions
7 with respect to employees who resign. For all aggrieved employees no longer employed by
8 Defendant, Defendant still has not paid such aggrieved employees all wages earned and unpaid at
9 the time of discharge, in that Defendant has not paid for, inter alia, overtime, time spent performing
10 work during uncompensated meal periods. These violations subject Defendant to civil penalties
11 under the Labor Code, including without limitation Labor Code sections 203, 256 and 2699. Each
12 violation results in a separate civil penalty, for each aggrieved employee for each pay period during
13 which the statutory provisions were violated.

14 26. California Labor Code section 2802 provides an employer shall fully reimburse an
15 employee for all reasonable and necessary expenses incurred in the performance of the employee's
16 job duties. As alleged herein, Plaintiff and the class members regularly incurred expenses including,
17 inter alia, work tools used in the performance of their job duties, which expenses were not fully
18 reimbursed by Defendants.

19 33. Plaintiff complied with the procedures for bringing suit specified in Labor Code
20 sections 2699.3 and 2699.5. By letter dated January 31, 2020, Plaintiff gave written notice to
21 the California Labor and Workforce Development Agency ("LWDA") via electronic mail at
22 PAGAfilings@dir.ca.gov, of the specific provisions of the Labor Code and Wage Orders
23 allegedly violated, including the facts and theories to support the alleged violations.

24 34. Under Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
26 date of the complainant's written notice. As of the date of this Complaint, the LWDA has not
27 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
28 herself and other similarly aggrieved employees. As of the date of this Complaint, Defendants

1 have not responded to Plaintiff's PAGA notices in an attempt to cure. Accordingly, Plaintiff
2 has exhausted all administrative remedies required by law.

3 PRAYER

4 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
5 as follows:

- 6 1. For civil penalties according to proof;
- 7 2. For reasonable attorney's fees and costs of suit; and
- 8 3. For such other and further relief as the Court deems just and proper.

9 Dated: April 15, 2020

CROSNER LEGAL, P.C.

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11 _____
12 Blake Jones
13 Zachary Crosner
14 Brittany Armstrong
15 Michael Crosner
16 Attorneys for Plaintiff FREDDIE SOLIS
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DEMAND FOR JURY TRIAL

PLAINTIFF EDDIE SOLIS demands a trial by jury on all claims so triable.

Dated: April 15, 2020

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Michael Crosner
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