

Alexander I. Dychter (SBN 234526)
S. Adam Spiewak (SBN 230872)
DYCHTER LAW OFFICES, APC
180 Broadway, Suite 1835
San Diego, California 92101
Telephone: (619) 487-0777
Facsimile: (619) 330-1827
E-Mail: alex@dychterlaw.com
E-Mail: adam@dychterlaw.com

Walter L. Haines (SBN 71075)
United Employees Law Group, PC
5500 Bolsa Ave., Suite 201
Huntington Beach, California 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006
E-Mail: admin@uelglaw.com

Attorneys for Plaintiff Paul Piccolo

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Paul Piccolo, an individual, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

v.

GoJump Oceanside, LLC, a California
Corporation, also *dba* GoJump America; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00003052-CU-OE-CTL

CLASS ACTION

COMPLAINT

1. Failure to Pay Minimum and Overtime Wages
2. Failure to Pay Separately and Hourly for Time Spent on Rest Periods
3. Failure to Provide Compliant Meal Periods
4. Failure to Authorize and Permit Compliant Rest Periods
5. Failure to Provide Accurate Wage Statements
6. Failure to Pay All Wages Owed Upon Separation
7. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Paul Piccolo (hereinafter “Plaintiff” or “Piccolo”), an individual, on behalf of
2 himself and all other similarly situated current and former employees, alleges on information and
3 belief, except for his own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. This is a putative class action brought against Defendant GOJUMP OCEANSIDE,
7 LLC *dba* GoJump America (hereinafter “Defendant”) for (i) failing to pay minimum wages and
8 overtime wages at the lawful regular rate of pay for all work performed; (ii) failing to pay properly
9 and separately on an hourly basis at the required rate of pay for time spent on rest breaks and other
10 non-productive time; (iii) failing to provide compliant duty-free meal periods; (iv) failing to
11 provide compliant duty-free rest periods; (v) failing to pay all owed wages each and every pay
12 period; (vi) failing to provide accurate, compliant, itemized wage statements; and (vii) failing to
13 pay all wages owed upon separation of employment, as mandated under the California Labor Code.

14 2. Defendant, in order to service customers who wish to skydive, hired workers as
15 skydiving instructors at its airport location in Oceanside, California. The cost, as proscribed by
16 law, of the personnel hired to work for Defendant includes not only the base wage compensation
17 and overtime pay of these employees, as well as meal and rest break premium pay, but the cost of
18 the employer's share of tax payments to the federal and state governments for income taxes, social
19 security taxes, Medicare insurance, unemployment insurance, and payments for workers'
20 compensation insurance (collectively the "Business Related Expenses"). To avoid the payment of
21 these legally proscribed Business Related Expenses to the fullest extent possible, Defendant
22 devised a scheme to place the responsibility for the payment of these costs and expenses of
23 Defendant on the shoulders of Plaintiff and other skydiving instructors by failing to treat them as
24 employees and instead misclassifying them as “independent contractors,” until approximately
25 September 2019, when Defendant appears to have “re-classified” its workforce as “employees.”
26 As an employer, Defendant is legally responsible for the payment of all these Business Related
27 Expenses. This lawsuit is brought on behalf of all those individuals who performed work for
28 Defendant as skydiving instructors for Defendant in the State of California (hereinafter the

1 “Instructors”), in order to collect the wages due to them as employees of Defendant, all meal and
2 rest break premium amounts, all Business Related expenses, and restitution for the cost of the
3 employer's share of payments to the federal and state governments for income taxes, social security
4 taxes, Medicare insurance, unemployment insurance and payments for workers' compensation
5 insurance, plus all applicable related penalties, and interest.

6 **JURISDICTION AND VENUE**

7 3. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure (“Cal. Code of Civ. Proc.”) § 410.10 and California Business & Professions Code
9 § 17203. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
10 employees of Defendants, pursuant to Cal. Code of Civ. Proc. § 382.

11 4. Venue is proper in this Judicial District and the County of San Diego because
12 Defendant does business in the County of San Diego and Plaintiff resides in this County.

13 **THE PARTIES**

14 **A. Plaintiff and the Class**

15 5. Plaintiff Paul Piccolo worked for Defendant in the State of California from
16 approximately December 7, 2017 through approximately October 5, 2019, as a skydiving
17 instructor. From the commencement of his employment until approximately September 2019,
18 Plaintiff was misclassified as an independent contractor by Defendant. Thereafter, Defendant “re-
19 classified” Plaintiff as an “employee” and began to incorporate a time-keeping system for Plaintiff
20 and other skydiving instructors to utilize for recording their shift “start” and “stop” times as well as
21 meal break time recordation.

22 6. California Labor Code § 226.8 provides that “[i]t is unlawful for any person or
23 employer to engage in . . . [w]illful misclassification of an individual as an independent contractor.”
24 The penalty for willful misclassification of employees is a “civil penalty of not less than five
25 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation,
26 in addition to any other penalties or fines permitted by law.” It is further provided that, in the event
27 that an employer is found to have engaged in “a pattern or practice of these violations,” the
28 penalties increase to “not less than ten thousand dollars (\$10,000) and not more than twenty-five

1 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted
2 by law.” Cal. Labor Code § 226.8.

3 7. Here, Defendant has willfully misclassified Plaintiff and other Instructors, as
4 described in California Labor Code § 226.8. Further, Defendant has engaged in a “pattern or
5 practice” of such violations, as contemplated by § 226.8 (c) of the California Labor Code. To the
6 extent that Defendant continues to misclassify Instructors, Defendant is also in violation of Labor
7 Code § 2750.3, which has been in effect since January 1, 2020, to codify the decision of the
8 California Supreme Court in *Dynamex*.

9 8. Upon hire, the position of an Instructor was represented by Defendant to Plaintiff
10 and the other Instructors as an independent contractor position with compensation being paid in the
11 form of piece-rate wages only, with no base or hourly compensation provided for all hours worked.
12 Plaintiff and other Instructors have been paid to perform sky diving instruction on Defendant’s
13 behalf at an airport location in the County of San Diego. Plaintiff and other Instructors have not
14 been compensated hourly wages for all time actually worked (including but not limited to properly
15 paid rest breaks and other non-productive time), nor have they been paid overtime wages for any of
16 their time spent working in excess of eight (8) hours in a workday and/or forty (40) hours in a
17 workweek at the lawful regular rate of pay. Nor has Defendant provided compliant meal breaks or
18 authorized and permitted properly paid rest periods to Plaintiff and the other Instructors, as required
19 by California law. Even to the extent that at some point Defendant purportedly began to pay
20 Plaintiff and other Instructors a base hourly rate of pay, Defendant also continued to compensate
21 Plaintiff and the other Instructors, in part, on a piece-rate basis, by paying a ‘bonus’ for each jump
22 performed. However, this non-discretionary piece-rate / bonus compensation was not properly
23 figured into the regular rate of pay for purposes of overtime compensation and/or purposes of
24 paying rest periods separately at the regular rate of pay.

25 9. To perform their job duties, Plaintiff and the other Instructors perform work subject
26 to the control of Defendant in that Defendant has the authority to exercise complete control over
27 the manner and means by which the work is performed. Defendant provides the customers, the
28 airplanes, the physical office space at the airport, and supplies to be used for skydiving instruction,

1 the pricing of the work, and the formal instructions / methodology / training (required by Defendant
2 in order to perform the work as assigned). California Labor Code § 3357 defines “employee” as
3 “every person in the service of an employer under any appointment or contact of hire or
4 apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.” In
5 addition to the California Labor Code’s presumption that workers are employees, the California
6 Supreme Court has reaffirmed that the burden is on employers to demonstrate why workers are not
7 employees and articulated that the following three tests must all be met to distinguish an
8 independent contractor from an employee: A) an independent contractor must be free from the
9 control and direction of the hiring entity; B) an independent contractor performs work that is
10 outside the usual course of the hiring entity’s business; and C) an independent contractor is
11 customarily engaged in an independently established trade, occupation, or business of the same
12 nature as the work performed for the hiring entity. Here, Defendant strictly controls both the work
13 performed and the standardized manner and means by which Plaintiff and the other Instructors
14 perform their work; Defendant engaged the instructors to perform work that is within the course of
15 Defendant’s own business, which entails offering and providing to customers skydiving at a
16 specific price set by Defendant; and Plaintiff is not regularly engaged in an independently
17 established business of performing skydiving instruction.

18 10. As a result, stripped of all the legal fictions and artificial barriers to an accurate,
19 legally compliant classification of the relationship between Plaintiff and the other Instructors on the
20 one hand, and Defendant on the other hand, Plaintiff and the other Instructors are and were
21 employees of Defendant and not independent contractors of Defendant and should therefore have
22 always been properly classified as non-exempt, hourly employees.

23 11. As a matter of company policy, practice and procedure, Defendant has unlawfully,
24 unfairly and/or deceptively classified every Instructor as an "independent contractor," in order to
25 unlawfully avoid compliance with all applicable federal and state laws that require payment for all
26 time worked (including but not limited to pay for rest breaks and other non-productive time as well
27 as overtime at a premium rate of pay), the provision of legally required breaks, and payment of the
28 employer's share of payroll taxes and mandatory insurance. As a result of the scheme to defraud

1 the federal and state governments and the Instructors, Plaintiff and the Instructors have been
2 underpaid throughout their employment with Defendant and have been denied the rights and
3 protections to which employees are entitled under California law.

4 12. The true names and capacities, whether individual, corporate, associate or otherwise
5 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to Plaintiff,
6 who therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code
7 §474. Plaintiff is informed and believes, and based thereon, alleges that each of the Defendants
8 designated herein is legally responsible in some manner for the unlawful acts referred to herein.
9 Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities
10 of these Defendants, when they have been ascertained and become known.

11 13. The agents, servants and/or employees of the Defendants and each of them, acting
12 on behalf of the Defendants, acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the Defendants, and personally participated in the conduct
14 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
16 Defendants are jointly and severally liable to Plaintiff and the other Instructors, for the loss
17 sustained as a proximate result of the conduct of the Defendant's agents, servants and/or
18 employees.

19 **B. Defendants**

20 14. Defendant GOJUMP OCEANSIDE, LLC *dba* GOJUMP AMERICA is an entity
21 created under the laws of the State of California. At all relevant times mentioned herein, Defendant
22 GoJump Oceanside conducted substantial business in the State of California, County of San Diego.
23 Defendant GoJump Oceanside is a company that provides skydiving instruction for the general
24 public. GoJump Oceanside operates under the name "GoJump America" and conducts business out
25 of the Oceanside Municipal Airport which is located at: 480 Airport Road, Oceanside, California
26 92058. The website for the business is: <https://gojump-america.com>.¹

27
28 ¹ Note: Although the main landing page for the company website indicates that the GoJump
America location in Southern California is located in Los Angeles, in actuality the link takes you to
a site for Oceanside, which is not actually in the County of Los Angeles but in San Diego County.

1 **All Class Members who performed work for Defendants at any time since**
2 **January 17, 2019 (“Wage Statement Subclass Members”).**

3 21. This action has been brought and may be maintained as a class action pursuant to
4 Code of Civil Procedure § 382, because there is a well-defined community of interest among many
5 persons who comprise a readily ascertainable class.

- 6 a. The Class Members are so numerous that individual joinder of all of them as
7 plaintiffs is impractical. Although the exact number of Class members is unknown
8 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that
9 there are not less than 100 Class Members.
- 10 b. The identity of Class Members can readily be determined from Defendants’ records.
11 Defendants’ records include the name and address of every person who performed
12 work for them in California during the Class Period.
- 13 c. Common questions of law and fact exist as to Class Members and predominate over
14 any questions that may affect only individual Class Members. These common
15 questions include, but are not limited to:
- 16 (1) Did Defendants, in violation of Labor Code § 226.8, willfully misclassify
17 Plaintiff and the Class Members as Independent Contractors?
- 18 (2) Did Defendants, in violation of Labor Code §§ 510, 1194, and 1197, fail to
19 pay Plaintiff and Class Members for all minimum and overtime wages owed
20 to them at the lawful rates of pay?
- 21 (3) Did Defendants violate § 226.2 and § 1194 of the Labor Code by failing to
22 pay Plaintiff and Class Members separately for rest periods and other non-
23 productive time at the legally required rates of pay?
- 24 (4) Did Defendants violate Labor Code §§ 226.7 and 512, and the applicable
25 I.W.C. Wage Order by failing to provide compliant duty-free meal periods as
26 alleged herein?
- 27 (5) Did Defendants violate Labor Code §§ 226.7 and 512, and the applicable
28 I.W.C. Wage Order by failing to authorize and permit compliant duty-free

rest periods as alleged herein?

- (6) Did Defendants fail to provide Wage Statement Subclass Members with accurate, compliant, itemized wage statements?
- (7) Are Defendants liable for civil penalties under Labor Code § 226?
- (8) Did Defendants, in violation of Labor Code § 201 or § 202, fail to pay timely all wages owed to Terminated Subclass Members upon separation?
- (9) Did Defendants act willfully when they failed to pay timely all wages owed to Terminated Subclass Members upon separation?
- (10) Are Defendants liable for penalty wages under Labor Code § 203?
- (11) Did Defendants violate the Unfair Competition Law, Business and Professions Code § 17200, *et seq.*, by their unlawful practices, as alleged herein?
- (12) Did Defendants violate the Unfair Competition Law, Business and Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and Class Members all wages earned each pay period, in violation of Labor Code §204, as alleged herein?
- (13) Are Defendants liable for restitution under Bus. & Prof. Code § 17203?
- (14) Are Defendants liable for pre-judgment interest?
- (15) Are Defendants liable for attorney's fees and costs?

d. Plaintiff is a Member of the Class and the Subclasses, and his claims are typical of the claims of the other Class Members and Subclass Members. Plaintiff is informed and believes and thereon alleges that Defendants maintain policies or practices of: 1) willfully misclassifying their workforce as independent contractors; 2) failing to pay minimum and overtime wages at the lawful rate of pay for all hours actually worked; 3) failing to separately pay for rest periods and other non-productive time; 4) failing to provide compliant meal periods; 5) failing to authorize and permit compliant properly paid rest periods; 6) failing to pay employees for all wages earned during each pay period; 7) failing to pay employees all earned wages due

1 upon separation of employment; and/or 8) failing to provide employees with
2 accurate, compliant itemized wage statements.

3 e. Plaintiff will adequately and fairly protect the interests of the Class Members and
4 Subclass Members. Plaintiff has no interest adverse to the interests of absent Class
5 Members and Subclass Members. Plaintiff is represented by legal counsel who has
6 substantial class action experience in civil litigation and employment law.

7 22. A class action is superior to other available means for fair and efficient adjudication
8 of the claims of the Class and would be beneficial for the parties and the court. Class action
9 treatment will allow a large number of similarly situated persons to prosecute their common claims
10 in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and
11 expense that numerous individual actions would require. The monetary amounts due to many
12 individual Class Members are likely to be relatively small, and the burden and expense of
13 individual litigation would make it difficult or impossible for individual members of the Class to
14 seek and obtain relief. A class action will serve an important public interest by permitting such
15 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
16 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Straight-Time and Overtime Wages**
19 **(By Plaintiff and the Class Members against all Defendants)**

20 23. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21 24. At all relevant times, Plaintiff and the Class Members were employees of
22 Defendants covered by Labor Code §§226.2, 510, 1194, 1197, 2750.3 and applicable I.W.C. Wage
23 Orders.

24 25. By their failure to pay straight-time wages and overtime wages for all time worked,
25 Defendants willfully breached their agreement to pay wages, in violation of Labor Code §§ 510,
26 1194 and 1197 and the applicable I.W.C. Wage Order, as well as Labor Code §§ 226.2 and 2750.3.

27 26. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
28 within the applicable limitations period, Defendants maintained a policy and practice of
misclassifying Plaintiff and the Class Members as Independent Contractors and failing to pay

1 minimum and overtime wages at the lawful regular rate of pay for all time actually worked and
2 other non-productive time.

3 27. As a result of Defendants' unlawful and willful conduct, employees have suffered
4 damages in an amount, subject to proof, to the extent they were not paid all straight-time and
5 overtime wages at the lawful regular rate of pay for all hours actually worked and owed to them
6 under Labor Code §§ 226.2, 510, 1194 and 1197, 2750.3 and the applicable I.W.C. Wage Order.

7 28. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class
8 Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-
9 judgment interest, reasonable attorney's fees and costs of suit.

10 **SECOND CAUSE OF ACTION**
11 **Failure to Pay Separately and Hourly for Time Spent on Rest Periods**
(By Plaintiff and the Class Members against all Defendants)

12 29. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

13 30. At all relevant times, Plaintiff and Members of the Class were employees of
14 Defendants covered by Labor Code §§226.2, 1194, 1194.2, and the applicable I.W.C. Wage Order.

15 31. As set forth above, during the Class Period, Plaintiff and the Class Members were
16 compensated in whole or in part on a piece-rate basis, but Defendants did not separately
17 compensate the Instructors at the regular rate of pay for their time spent on rest periods or other
18 non-productive time, in violation of Labor Code § 226.2 and § 1194. For a portion of the Class
19 Period, when Plaintiff and Class Members were compensated solely on a piece rate basis, they
20 received no compensation for rest periods or other non-productive time, in violation of Labor Code
21 § 226.2 and § 1194.

22 32. Accordingly, during the Class Period, Plaintiff and Class Members did not receive
23 the requisite compensation under L.C. § 226.2 for their time spent taking statutory rest breaks.

24 33. In failing to pay Class Members for their time spent on rest periods separately,
25 particularly after *Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, *Gonzalez v.*
26 *Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, and the enactment of Labor Code §226.2,
27 consistent with those holdings, Defendants have operated in bad faith, given the state of the law.
28 Accordingly, pursuant to § 1194 and § 1194.2 of the California Labor Code, Plaintiff and the Class

1 Members are entitled to recover their unpaid hourly wages due, or minimum wage plus liquidated
2 damages, in an additional amount equal to the total amount of wages unlawfully withheld during
3 the Class Period for Instructors' rest time and other non-productive time.

4 34. Pursuant to § 1194.2 of the Labor Code, Plaintiff and the Class Members are also
5 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Provide Required Meal Periods**
(By Plaintiff and the Class Members against all Defendants)

8 35. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

9 36. At all relevant times, Plaintiff and the Class Members were employees of
10 Defendants, covered by Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order.

11 37. Pursuant to Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order,
12 Plaintiff and the Class Members were entitled to a meal period of at least thirty (30) minutes for
13 each workday that they worked more than five (5) hours, and a second meal period of at least thirty
14 (30) minutes for each workday they worked more than ten (10) hours, and one additional hour of
15 pay for every day that all required, compliant meal period were not provided.

16 38. Defendants failed to provide Plaintiff and the Class Members meal periods in
17 accordance with Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order. As a result
18 of Defendants' willful misclassification of their workforce, Plaintiff and the Class Members were
19 not provided with meal periods by Defendants, as mandated under the Labor Code. As a result, in
20 accordance with Defendants' strict corporate policy and practice, Plaintiff and the Class Members
21 therefore forfeited meal breaks without receiving premium pay under California law. Even after re-
22 classifying Plaintiff and Class Members, Defendants continued to fail to provide all required
23 compliant meal periods or premium pay in lieu thereof.

24 39. Defendants failed to provide Plaintiff and the Class Members the additional hour of
25 pay required by Labor Code § 226.7 and the applicable I.W.C. Wage Order. Plaintiff is informed
26 and believes and thereon alleges that at all relevant times within the applicable limitations period,
27 Defendants maintained and continue to maintain a policy or practice of not paying additional pay to
28 employees for missed meal periods at the lawful rate of pay.

1 rate of pay. Defendants also failed to provide and continue to fail to properly pay Plaintiff and
2 Class Members at the regular rate of pay for all rest periods, as required by law.

3 46. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
4 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
5 owed for missed rest periods at the lawful rate of pay.

6 47. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to
7 recover the full amount of their unpaid additional wages for missed rest periods. Pursuant to Labor
8 Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable attorney's
9 fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the
10 Class Members are entitled to recover prejudgment interest on the additional pay owed for missed
11 rest periods.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Provide Accurate Itemized Wage Statements**

14 (By Plaintiff and the Wage Statement Subclass Members against all Defendants)

15 48. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 49. At all relevant times, Plaintiff and the Wage Statement Subclass Members were
17 employees of Defendants covered by Labor Code § 226.

18 50. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass
19 Members were entitled to receive, semi-monthly or at the time of each payment of wages, an
20 accurate itemized statement showing gross wages earned; net wages earned; all applicable hourly
21 rates in effect during the pay period; and, the corresponding number of hours worked at each hourly
22 rate by the employee.

23 51. Defendants failed to provide Plaintiff and the Wage Statement Subclass Members
24 accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2.
25 Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year
26 preceding the filing of the Complaint in this action (the "Penalty Period"), Defendants maintained a
27 policy or practice of failing to pay wages for time spent during rest periods separate from their
28 piece-rate compensation, failing to pay wages for non-productive time, failing to accurately record
all hours actually worked, failing to pay meal break premium payments, failing to pay rest period

1 premium payments to piece-rate Instructors in California, failing to pay compensation for non-
2 productive time, including rest breaks, and failing to itemize the applicable rates of compensation.
3 Defendants' practice resulted and continues to result in the issuance of non-compliant 'wage
4 statements' to Class Members that do not show the correct amount of gross wages earned, the
5 correct amount of net wages earned, the correct number of hours worked, the correct hourly rates of
6 pay in effect for each hour worked, and the correct deductions made thereto for taxing authority
7 purposes and also fail to comply with the requirements of Labor Code § 226.2(a)(2), in terms of
8 detailing the hours, rates of compensation, and total wages for rest breaks and other non-productive
9 time.

10 52. Defendants' failure to provide Plaintiff and the Wage Statement Subclass Members
11 with accurate itemized wage statements was knowing and intentional. Defendants had the ability to
12 provide Plaintiff and Wage Statement Subclass Members with accurate wage statements, but
13 intentionally provided 'wage statements' that Defendants knew were not accurate or compliant.

14 53. As a result of Defendants' conduct, Plaintiff and the Wage Statement Subclass
15 Members have suffered injury. The absence of accurate and complete information on their wage
16 statements has prevented timely challenges to Defendants' unlawful pay practices, required
17 discovery and mathematical computations to determine the amount of wages owed and number of
18 hours actually worked, caused difficulty and expense in attempting to reconstruct time and pay
19 records, and led to the submission of inaccurate information about wages and deductions to state
20 and federal government agencies.

21 54. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass
22 Members are entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty
23 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each
24 violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of
25 four thousand dollars (\$4,000) per employee.

26 55. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass
27 Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with
28 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide

1 currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant
2 'wage statements' in violation of Labor Code § 226(a) and currently employed Wage Statement
3 Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered
4 as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available
5 for ensuring Defendants' compliance with Labor Code § 226(a).

6 56. Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement
7 Subclass Members are entitled to recover the full amount of penalties due under Labor Code
8 §226(e), reasonable attorney's fees and costs of suit.

9 **SIXTH CAUSE OF ACTION**
10 **Failure to Pay All Wages Owed Upon Termination**
(By Plaintiff and the Terminated Subclass Members against all Defendants)

11 57. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 58. At all relevant times, Plaintiff and the Terminated Subclass Members, were
13 employees of Defendants covered by Labor Code §§ 201 or 202.

14 59. Pursuant to Labor Code §§ 201 or 202, Plaintiff and the Terminated Subclass
15 Members were entitled upon termination to timely payment of all wages earned and unpaid prior to
16 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
17 to discharge immediately upon termination. Employees who resigned were entitled to payment of
18 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
19 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
20 unpaid prior to resignation at the time of resignation.

21 60. Defendants failed to pay Plaintiff and the Terminated Subclass Members all wages
22 earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202. Plaintiff is
23 informed and believes and thereon alleges that during the three (3) year limitations period
24 applicable to this cause of action, Defendants maintained and continue to maintain a policy or
25 practice of failing to pay all overtime wages at the lawful rate of pay, all meal period premium
26 payments, and all rest period premium payments owed at the time of termination of employment, as
27 well as failing to compensate Class Members for rest breaks and other non-productive time.

28 ///

1 61. Defendants' failure to pay Plaintiff and the Terminated Subclass Members all wages
2 earned prior to termination in accordance with Labor Code § 201 or § 202 was willful. Defendants
3 had the ability to pay all wages earned by employees – including but not limited to overtime wages
4 and wages for rest breaks and other non-productive time, but intentionally adopted policies or
5 practices incompatible with the requirements of Labor Code §§ 510, 1194, and 1197, and the
6 applicable I.W.C. Wage Order(s). Defendants had the ability to pay all meal period and rest period
7 premium payments earned by employees, but intentionally adopted policies or practices
8 incompatible with the requirements of Labor Code §§ 226.7 and 512, and the applicable I.W.C.
9 Wage Order(s). When Defendants failed to pay upon termination all wages earned prior to
10 termination, Defendants knew what they were doing and intended to do what they did.

11 62. Pursuant to Labor Code § 201 or § 202, Plaintiff and the Terminated Subclass
12 Members are entitled to all wages earned prior to termination that Defendants did not pay them.

13 63. Pursuant to Labor Code § 203, Plaintiff and the Terminated Subclass Members are
14 entitled to penalty wages, from the day their earned and unpaid wages were due upon termination
15 until paid, up to a maximum of 30 days.

16 64. As a result of Defendants' conduct, Plaintiff and the Terminated Subclass Members
17 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
18 earned prior to termination in violation of Labor Code § 201 or § 202.

19 65. As a result of Defendants' conduct, Plaintiff and the Terminated Subclass Members
20 have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty
21 wages owed to them in violation of Labor Code § 203.

22 66. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Terminated Subclass
23 Members are entitled to recover the full amount of their unpaid wages, unpaid penalty wages, and
24 reasonable attorney's fees and costs of suit. Plaintiff and the Terminated Subclass Members are
25 entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under
26 Labor Code § 218.6 and/or Civil Code § 3287(a).

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28 ///

SEVENTH CAUSE OF ACTION
Violation of California's Unfair Competition Law ("UCL")
[Cal. Bus. & Prof. Code § 17200, *et seq.*]
(By Plaintiff and the Class Members against all Defendants)

67. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

68. Plaintiff brings this claim on behalf of himself and all others similarly situated in his representative capacity against Defendants and Does 1 through 50, for their unlawful business acts and/or practices pursuant to California Business & Professions Code § 17200, *et seq.* (the "UCL"), which prohibits all unlawful business acts and/or practices.

69. Defendants are each a "person," as that term is defined under Cal. Bus. and Prof. Code § 17021.

70. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

71. By the conduct alleged herein, Defendants have engaged and continue to engage in business practices that violate California law, including but not limited to, the applicable I.W.C. Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201-204, 206.5, 226.7, 226, 226.2, 226.8, 510, 512, 558, 1194, 1198, and 2750.3 for which this Court should issue declaratory and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages and premium pay wrongfully withheld.

72. By the conduct alleged herein, Defendants' practices were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this
2 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
3 Business & Professions Code, including restitution of wages and premium pay wrongfully
4 withheld.

5 73. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent
6 in that Defendants' uniform policy and practice willfully misclassified their employee Instructors
7 as independent contractors, failed to pay Plaintiff and the Class Members straight-time and
8 overtime wages for all time actually worked at the lawful rate of pay (including rest breaks and
9 other non-productive time), failed to provide lawful meal breaks and rest periods, failed to pay
10 wages earned each and every pay period, failed accurately to record the applicable rate(s) of all
11 time worked, and failed to pay all wages owed upon separation of employment, pursuant to the
12 applicable Cal. Lab. Code, and I.W.C. requirements in violation of Cal. Bus. Code §§ 17200, *et*
13 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
14 Prof. Code § 17203, including restitution of wages and premium pay wrongfully withheld.

15 74. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
16 deceptive in that Defendants' employment practices caused Plaintiff and the Class Members to be
17 underpaid during their employment with Defendants.

18 75. By the conduct alleged herein, Defendants' practices were also unfair and deceptive
19 in that Defendants' uniform policies, practices and procedures failed to provide mandatory meal
20 periods and/or rest periods to Plaintiff and the Class Members.

21 76. By and through the unlawful and unfair business practices described herein,
22 Defendants have obtained valuable property, money and services from Plaintiff and the Class
23 Members, including earned wages for all overtime worked and meal and rest period premium
24 wages, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to
25 the detriment of these employees and to the benefit of Defendants, so as to allow Defendants to
26 unfairly compete against competitors who comply with the law.

27 77. All of the acts described herein as violations of, among other things, the I.W.C.
28 Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful

1 and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
2 deceptive, and thereby constitute unlawful, unfair, and/or deceptive business practices, in violation
3 of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 78. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be
5 necessary to restore to them the money and property which Defendants have acquired, or of which
6 Plaintiff and the Class Members have been deprived, by means of the above described unlawful
7 and unfair business practices, including earned but unpaid wages for all time worked.

8 79. Plaintiff and the Class Members are further entitled to, and do, seek a declaration
9 that the described business practices are unlawful, unfair and deceptive, and that injunctive relief
10 should be issued restraining Defendants from engaging in any unlawful and unfair business
11 practices in the future.

12 80. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at
13 law that will end the unlawful and unfair business practices of Defendants. Further, the practices
14 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business
15 practices described herein, Plaintiff and the Class Members have suffered and will continue to
16 suffer irreparable legal and economic harm unless Defendants are restrained from continuing to
17 engage in these unlawful and unfair business practices.

18 81. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief,
19 including restitution, attorney's fees and costs, declaratory relief, and a permanent injunction
20 enjoining Defendants from their unlawful and/or unfair activity.

21 **PRAYER FOR RELIEF**

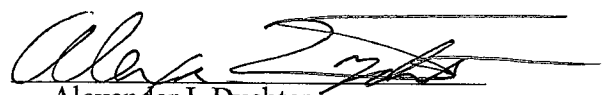
22 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
23 judgment against Defendants as follows:

- 24 A. An order certifying this case as a class action;
25 B. An order appointing Plaintiff as representative for the Class;
26 C. An order appointing Plaintiff's counsel as counsel for the Class;
27 D. Civil Penalties under Labor Code § 226.8;
28 E. Damages for unpaid minimum and overtime wages;

- 1 F. Civil Penalties under Labor Code § 226(e);
2 G. Damages for unpaid additional pay owed for missed meal breaks pursuant to Labor
3 Code § 226.7;
4 H. Damages for unpaid additional pay owed for missed rest periods pursuant to Labor
5 Code § 226.7;
6 I. Damages for unpaid compensation during rest periods and other non-productive
7 time, pursuant to Labor Code § 226.2, § 1194, and § 1194.2;
8 J. Damages for unpaid final wages under Labor Code § 201 or § 202;
9 K. Damages for penalty wages under Labor Code § 203;
10 L. Restitution for unpaid wages under Business and Professions Code § 17203;
11 M. Prejudgment interest at the maximum legal rate;
12 N. Reasonable attorney's fees;
13 O. Costs of suit; and,
14 P. Such other relief as the Court may deem just and proper.

15
16 Dated: January 17, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

17
18
19 By: 

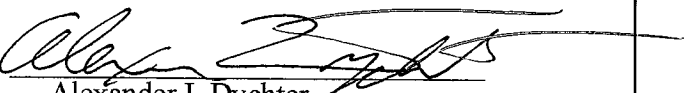
Alexander I. Dychter
Attorneys for Plaintiff Piccolo

20
21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

24 Dated: January 17, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

25
26
27 By: 

Alexander I. Dychter
Attorneys for Plaintiff Piccolo