

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleinfeld

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10 individually and on behalf of all other
11 aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 JOEL ORTEGA, individually and on behalf of
15 all other aggrieved employees,

16 Plaintiff,

17 vs.

18 HYDROCHEM LLC, a Delaware limited
19 liability company; and DOES 1 through 50,
20 inclusive,

21 Defendants.

CASE NO.: ~~20ST CV 12010~~

**COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, et seq.]

DEMAND FOR JURY TRIAL

1 Plaintiff JOEL ORTEGA (“PLAINTIFF”), individually and on behalf of all other
2 aggrieved employees, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of defendants HYDROCHEM LLC (“HYDROCHEM”) and DOES 1 through 50,
6 inclusive (collectively, “DEFENDANTS”), in the State of California during the relevant statutory
7 period to recover penalties arising from DEFENDANTS’ failure to provide employees meal and
8 rest periods (or compensation therefor) as required under California law, unpaid minimum and
9 overtime wages, and unreimbursed business expenses.

10 **JURISDICTION AND VENUE**

11 2. The Superior Court of the State of California has jurisdiction in this matter because
12 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
13 business in California and regularly conduct business in California. Further, no federal question is at
14 issue because the claims are based solely on California law.

15 3. Venue is proper in this judicial district and the County of Los Angeles, California
16 because DEFENDANTS maintain offices and facilities and transact business in the County of Los
17 Angeles, and DEFENDANTS’ illegal policies and practices which are the subject of this action
18 were applied, at least in part, to PLAINTIFF and other aggrieved employees in the County of Los
19 Angeles.

20 **THE PARTIES**

21 4. PLAINTIFF is a citizen and resident of the State of California. During the
22 relevant statutory period, PLAINTIFF was employed by DEFENDANTS in California as a non-
23 exempt employee. PLAINTIFF worked for DEFENDANTS as a Technician Operator III at
24 DEFENDANTS’ facility located in Long Beach, California from approximately June 2017 to
25 September 2019.

26 5. PLAINTIFF is informed and believes, and thereon alleges, that HYDROCHEM is,
27 and at all times relevant hereto was, a corporation organized and existing under the laws of the
28 State of Delaware. PLAINTIFF is further informed and believes, and thereon alleges, that

1 HYDROCHEM is authorized to conduct business, and does conduct business, in the State of
2 California. Specifically, HYDROCHEM maintains offices and facilities, conducts business, and
3 engages in illegal policies or practices in the County of Los Angeles.

4 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
5 PLAINTIFF at this time, and PLAINTIFF therefore sue such DOE defendants under fictitious
6 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated
7 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
8 PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
9 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of Court
10 to amend this Complaint to allege their true names and capacities of such DOE defendants when
11 ascertained.

12 7. At all relevant times herein, DEFENDANTS were the joint employers of
13 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
14 alleges, that at all relevant times DEFENDANTS were the alter egos, divisions, affiliates,
15 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
16 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
17 of each other. Each defendant was completely dominated by his, her, or its co-defendant, and
18 each was the alter ego of the other.

19 8. At all relevant times, PLAINTIFF and other aggrieved employees were employed
20 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
21 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of
22 them, acted pursuant to, and in furtherance of, their policies and practices of not paying
23 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
24 schemes which include, but are not limited to, failing to provide meal periods; failing to authorize
25 and permit rest breaks; failing to pay minimum and overtime wages; failing to provide accurate
26 itemized statements; failing to maintain required records; and failing to compensate PLAINTIFF
27 and other aggrieved employees for necessary expenditures, in violation of the California Labor
28 Code and the applicable Industrial Welfare Commission ("IWC") Wage Order.

1 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
2 of the acts and omissions alleged herein were performed by, and/or attributable to, all
3 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
4 of each of the other defendants, and that said acts and failures to act were within the course and
5 scope of said agency, employment and/or direction and control.

6 10. As a direct and proximate result of DEFENDANTS' unlawful actions,
7 PLAINTIFF and other aggrieved employees have suffered, and continue to suffer, from loss of
8 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
9 of this Court.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 11. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
12 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
13 former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time
14 within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action,
15 and ending at the time this action settles or proceeds to final judgment ("PENALTY PERIOD").

16 12. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
17 January 16, 2020 by online filing to the California Labor and Workforce Development Agency
18 ("LWDA") and by certified mail to HYDROCHEM of the specific provisions of the California
19 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
20 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
21 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

22 13. Therefore, PLAINTIFF has complied with all of the requirements set forth in
23 California Labor Code § 2699.3 to commence a representative action under PAGA.

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1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Meal Periods**

3 **[Labor Code §§ 226.7, 512; IWC Wage Order No. 16-2001 § 11]**

4 14. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
5 policy and practice of failing to provide PLAINTIFF and other aggrieved employees full and
6 timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage
7 Order No. 16-2001 § 11.

8 15. As a result of DEFENDANTS' policies and practices as alleged herein,
9 PLAINTIFF and other aggrieved employees regularly were denied, and continue to be denied, the
10 opportunity to take full, uninterrupted, and timely meal periods as required under California
11 Labor Code §§ 226.7 and 512 and IWC Wage Order No. 16-2001 § 11.

12 16. DEFENDANTS further violated, and continue to violate, California Labor Code §
13 226.7 and IWC Wage Order No. 16-2001 § 11 by failing to compensate PLAINTIFF and other
14 aggrieved employees who were not provided a meal period, in accordance with the applicable
15 Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for
16 each workday that a meal period was not provided.

17 **Failure to Authorize and Permit Rest Periods**

18 **[Labor Code § 226.7; IWC Wage Order No. 16-2001 § 12]**

19 17. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
20 policy and practice of failing to authorize and permit PLAINTIFF and other aggrieved employees
21 to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 16-
22 2001 § 12. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF
23 and other aggrieved employees regularly were denied, and continue to be denied, the opportunity
24 to take full, uninterrupted, and timely rest periods as required under California Labor Code §
25 226.7 and IWC Wage Order No. 16-2001 § 12.

26 18. DEFENDANTS further violated, and continue to violate, California Labor Code §
27 226.7 and IWC Wage Order No. 16-2001 § 12 by failing to pay PLAINTIFF and other aggrieved
28 employees who were not provided a rest period, in accordance with the applicable Wage Order,

one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

Failure to Pay Minimum Wages

[Labor Code §§ 1194, 1197; IWC Wage Order No. 16-2001 § 4]

19. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 16-2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

20. During the PENALTY PERIOD, DEFENDANTS failed to, and continue to fail to, pay PLAINTIFF and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work through meal breaks without compensation; rounding PLAINTIFF's and other aggrieved employees' clock-in and clock-out times in a manner that resulted, over time, in failure to compensate employees for all time worked; illegally and inaccurately recording time worked by PLAINTIFF and other aggrieved employees; and other methods to be discovered.

Failure to Pay Overtime Wages

[Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 16-2001 § 3]

21. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 16-2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

22. PLAINTIFF and other aggrieved employees are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage Order No. 16-2001. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as

1 required under the foregoing provisions of the California Labor Code and IWC Wage Order by,
2 among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular
3 rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage Order No. 16-
4 2001 § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work
5 off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to
6 work through meal breaks without compensation; rounding PLAINTIFF's and other aggrieved
7 employees' clock-in and clock-out times in a manner that resulted, over time, in failure to
8 compensate employees for all time worked; illegally and inaccurately recording time in which
9 PLAINTIFF and other aggrieved employees worked; and other methods to be discovered.

10 **Failure to Timely Pay Wages During Employment**

11 **[Labor Code § 204]**

12 23. Pursuant to California Labor Code § 204, for all labor performed between the 1st
13 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
14 employees between the 16th and 26th day of the month during which the labor was performed.
15 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
16 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
17 between the 1st and 10th day of the following calendar month. In addition, California Labor
18 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
19 paid no later than the payday of the next regular payroll period.

20 24. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
21 timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the
22 next regular payroll period as required by California Labor Code § 204.

23 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

24 **[Labor Code §§ 201, 202]**

25 25. Pursuant to California Labor Code §§ 201 and 202, DEFENDANTS are required
26 to timely pay all earned and unpaid wages to an employee upon separation.

27 26. California Labor Code § 201 mandates that if an employer discharges an
28 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable

1 immediately.

2 27. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
3 accrued wages due to an employee no later than 72 hours after the employee quits his or her
4 employment, unless the employee provided 72 hours previous notice of his or her intention to
5 quit, in which case the employee is entitled to his or wages at the time of quitting.

6 28. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
7 pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
8 accordance with California Labor Code §§ 201 and 202.

9 **Failure to Maintain Required Records**

10 **[Labor Code §§ 226, 1174; IWC Wage Order No. 16-2001 § 7]**

11 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
12 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
13 and due, DEFENDANTS failed, and continue to fail, to maintain records as required under
14 California Labor Code §§ 226 and 1174 and IWC Wage Order No. 16-2001 § 7, including but not
15 limited to the following records: total daily hours worked by each employee; applicable rates of
16 pay; all deductions; meal periods; time records showing when each employee begins and ends
17 each work period; and accurate itemized statements.

18 **Failure to Furnish Accurate Itemized Wage Statements**

19 **[Labor Code § 226; IWC Wage Order No. 16-2001 § 7]**

20 30. During the PENALTY PERIOD, DEFENDANTS failed to provide PLAINTIFF
21 and other aggrieved employees with timely and accurate itemized wage statements in writing
22 showing each employee's gross wages earned, total hours worked, all deductions made, net
23 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
24 other aggrieved employees, and all applicable hourly rates in effect during each pay period and
25 the corresponding number of hours worked at each hourly rate, in violation of California Labor
26 Code § 226 and IWC Wage Order No. 16-2001 § 7.

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1 36. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
2 DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
3 provided, including but not limited to the following:

4 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
5 DEFENDANTS are subject to a civil penalty in the amount of one hundred
6 dollars (\$100) for the initial violation for each failure to pay each employee
7 and two hundred dollars (\$200) per employee for violations in subsequent
8 pay periods.

9 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
10 DEFENDANTS are subject to a civil penalty in the amount of two hundred
11 and fifty dollars (\$250) per aggrieved employee for the initial pay period
12 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
13 employee for violations in subsequent pay periods.

14 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person acting
15 on behalf of an employer who violates, or causes to be violated, a section
16 of this chapter or any provision regulating hours and days of work in any
17 order of the Industrial Welfare Commission," including Labor Code §§ 510
18 and 512, shall be subject to a civil penalty, in addition to any other penalty
19 provided by law, of fifty dollars (\$50) for initial violations for each
20 underpaid employee for each pay period for which the employee was
21 underpaid and one hundred dollars (\$100) for each subsequent violation for
22 each underpaid employee for each pay period for which the employee was
23 underpaid.

24 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
25 DEFENDANTS are subject to a civil penalty of five hundred dollars
26 (\$500).

27 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
28 paid to any employee a wage less than the minimum fixed by an order of

1 the commission, shall be subject to a civil penalty as follows: for any initial
2 violation that is intentionally committed, one hundred dollars (\$100) for
3 each underpaid employee for each pay period for which the employee is
4 underpaid; and for each subsequent violation of the same offense, two
5 hundred fifty dollars (\$250) for each underpaid employee for each pay
6 period for which the employee is underpaid regardless of whether the
7 initial violation was intentionally committed.

8 37. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
9 penalty is not specifically provided, the following civil penalties are established: one hundred
10 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
12 PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS'
13 violations of Labor Code provisions for which a civil penalty is not specifically provided,
14 including but not limited to Labor Code §§ 201, 202, 204, 226.7, 1194, 1197, 1198, and 2802.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees,
17 respectfully prays for relief against DEFENDANTS, and each of them, as follows:

18 1. For civil penalties according to proof, and all penalties authorized by the Labor
19 Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

20 2. For interest at the legal rate pursuant to California Civil Code §§ 3287 and 3288
21 and/or any other applicable provision providing for pre-judgment interest;

22 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
23 any other applicable provisions providing for attorney's fees and costs; and

24 4. For such further relief that the Court may deem just and proper.

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1 DATED: March 25, 2020

Respectfully submitted,

2 **MATERN LAW GROUP, PC**

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4 By:



MATTHEW J. MATERN

LAUNA ADOLPH

DEANNA S. LEIFER

Attorneys for Plaintiff JOEL ORTEGA,
individually and on behalf of all other aggrieved
employees

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1 **DEMAND FOR JURY TRIAL**

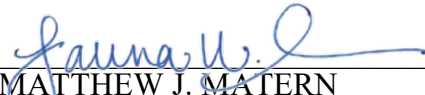
2 PLAINTIFF, individually and on behalf of all other aggrieved employees, hereby
3 demands a trial by jury on all issues so triable.

4
5 DATED: March 25, 2020

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7
8 By:


9 MATTHEW J. MATERN
LAUNA ADOLPH
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Attorneys for Plaintiff JOEL ORTEGA,
11 individually and on behalf of all other aggrieved
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