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 Adan Torres

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

ADAN TORRES, an individual,
 Plaintiff,

v.

THE GREEN SPOT RECYCLING
 CORPORATION, a corporation; and DOES 1
 through 20, inclusive,
 Defendants.

Case No. **20STCV25108**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §98.6);**
- 2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 3. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 5. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802)**
- 6. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 7. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §226, ET SEQ.);**
- 8. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 9. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ);**

10. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §1198.5); AND

11. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.)

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, Adan Torres, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, Adan Torres, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant THE GREEN SPOT RECYCLING CORPORATION (hereinafter referred to as “EMPLOYER DEFENDANT”) was and is a California corporation doing business at 4060 Glencoe Avenue #315, Marina Del Rey, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated a private corporation.

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1 5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
2 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
3 Commission Order No. 9-2001, and are each any "employer or other person acting on behalf of an
4 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

5 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
6 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
7 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
8 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
9 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
10 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
11 alleged hereinafter.

12 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
13 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
14 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
15 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
16 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
17 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

18 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
19 of them, including those defendants named as DOES 1-20 acted in concert with one another to commit
20 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
21 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
22 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
23 each of them, including those defendants named as DOES 1-20 and each of them, formed and executed
24 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
25 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
26 actually causing Plaintiff harm.

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1 9. Whenever and wherever reference is made in this complaint to any act or failure to act by
2 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
3 and/or failures to act by each Defendant acting individually, jointly and severally.
4

5 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

6 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
7 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
8 defendants have ceased to exist.

9 11. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
10 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
11 including, but not limited to because:

12 a. Employers are completely dominated and controlled by one another and DOES 1-
13 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
14 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
15 accomplish some other wrongful or inequitable purpose.

16 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
17 through one another's unlawful conduct, and by using one another as the funding source for their own
18 personal expenditures.

19 c. Employers and DOES 1-20, while really one and the same, were segregated to
20 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
21 accomplishing some other wrongful or inequitable purpose.

22 d. Employers do not comply with all requisite corporate formalities to maintain a
23 legal and separate corporate existence.

24 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
25 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
26 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
27 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
28 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of

1 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
2 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
3 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
4 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

5 12. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
6 fiction of their separate corporate existence must be disregarded.

7 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
9 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
10 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
11 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
12 Defendants' business was and is conducted.

13 14. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
14 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
15 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
16 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
17 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
18 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
19 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
20 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

21
22 **FACTUAL ALLEGATIONS**

23 15. On or about February 12, 2015, DEFENDANT hired Plaintiff to work as a driver. Plaintiff
24 was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before
25 Plaintiff was wrongfully terminated on or about September 13, 2019.

26 16. Throughout much of his employment with DEFENDANT, Mr. Torres worked 40 to 63
27 hours and a minimum of 6 days a week.

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1 17. Between July 8, 2016 and approximately February 2019, Plaintiff was paid \$30.00 per trip
2 every week in cash while misclassified as a 1099 independent contractor. He was paid \$600.00 to
3 \$1,000.00 every week in cash, depending on number of trips completed. As such, his hourly rate is
4 calculated to be \$21.25 per hour for wages owed purposes. During this time period, Plaintiff's fixed work
5 schedule was six to seven days per week, Monday through Sunday, for approximately 9 to 11 hours per
6 day.

7 18. On or around February 2019, DEFENDANT finally stopped paying Mr. Torres as a 1099
8 independent contractor. DEFENDANT began to pay him at a rate of \$18.00 per hour, six to seven days
9 per week, for approximately 9 to 11 hours per day.

10 19. Throughout his entire employment period, Plaintiff worked approximately 20 hours of
11 overtime each week, for which Plaintiff received no wages at all, not Plaintiff's hourly wage rate, or even
12 the requisite minimum wage.

13 20. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
14 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
15 thereof.

16 21. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
17 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
18 worked. Throughout Plaintiff's employment, Plaintiff did not receive a second uninterrupted statutory
19 30-minute meal periods for days on which Plaintiff worked at least 10 hours, which was each day Plaintiff
20 worked. One or more of Plaintiff's 30-minute meal periods were not provided which was each day
21 Plaintiff worked.

22 22. Plaintiff complained to ROGER VELASQUEZ ("VELASQUEZ"), his supervisor at the
23 time, about unpaid wages, not being provided meal and rest periods.

24 23. Plaintiff complained about not being given meal or rest periods. Velasquez would tell
25 Plaintiff that he did not need rest or meal periods because he was driving all day.

26 24. Plaintiff complained about being owed wages. Velasquez would acknowledge Plaintiff
27 but would not follow-up and pay Plaintiff his wages.

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1 25. Because Employers misclassified Plaintiff as an independent contractor/exempt
2 employee, at no time during Plaintiff's employment was Plaintiff paid for all hours worked or overtime
3 premiums, nor was Plaintiff provided with uninterrupted 10-minute rest periods as required by law, with
4 uninterrupted meal periods as required by law, or with itemized wage statements as required by law.

5 26. From on or about August 10, 2019 to September 12, 2019, Plaintiff was not paid his wages
6 owed. During this time, Plaintiff complained to Velasquez about being owed wages. Plaintiff and other
7 similarly situated employees requested to be paid. On or about September 12, 2019, Plaintiff complained
8 to Velasquez about not having enough money to pay for gas to go in to work the following day due to
9 Defendants failure to pay Plaintiff his wages. Velasquez told Plaintiff he did not care that Plaintiff did
10 not have enough money and to report to work.

11 27. On or about September 13, 2019, Plaintiff was unable to drive to work because he needed
12 his wages owed to him. In retaliation, Defendants terminated Plaintiff's employment on September 13,
13 2019.

14
15 **FIRST CAUSE OF ACTION**

16 **RETALIATION**

17 **LABOR CODE §98.6**

18 **AGAINST ALL DEFENDANTS**

19 28. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 29. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against
22 an employee for political activities; for complaining that he or she is owed unpaid wages, for
23 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
24 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
25 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
26 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
27 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code.
28 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or

1 retaliating against an employee who, among other things, has exercised her or her rights under that
2 Chapter, including the right to take meal breaks, and/or made a written or oral complaint that he or she
3 is owed unpaid wages. An employee who has been discharged or retaliated against in violation of
4 Labor Code §98.6 is entitled to recovery of a civil penalty against the employer in an amount not
5 exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

6 30. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
7 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
8 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
9 and/or rest breaks.

10 31. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
11 Defendants, and Defendants' officers and/or managing agents, including, and those identified herein as
12 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy
13 for Defendants. The aforementioned conduct of said managing agents and individuals was therefore
14 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
15 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
16 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
17 identified and designated herein as DOES 1-20, inclusive.

18 32. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
19 exceed \$10,000.00 for each of Defendants' violations of Labor Code §§ 98.6.

20 33. Because the acts taken toward Plaintiff were carried out by managerial employees acting
21 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs' rights
22 and in order to injure and damage them, Plaintiffs requests that punitive damages be levied against
23 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

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SECOND CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST ALL DEFENDANTS

34. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

35. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot retaliate against any employee on the basis of engagement in protected activity.

36. Plaintiff believes and thereon alleges that Plaintiff's engagement in protected activity was factored in Defendants' conduct as alleged hereinabove.

37. Such retaliation, resulting in the wrongful termination of Plaintiff's employment on the basis of Plaintiff's complaining of unpaid wages and missed lunches and breaks. Plaintiff's engagement in protected activity, was a proximate cause in Plaintiff's damages as stated below.

38. The above said acts of Defendants constitute violations of the Government Code and the public policy of the State of California embodied therein as set forth above. Defendants violated these laws by retaliating against Plaintiff and terminating Plaintiff's employment in retaliation for exercise of protected rights.

39. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force and effect and was binding upon Defendants and each of them. This law prohibits retaliation against employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of individual employees and job applicants who could not otherwise afford to protect themselves from violations of the Labor Code.

40. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's engagement in protected activities under Labor Code §98.6 was or were a proximate cause in Plaintiff's damages as stated below.

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1 41. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
3 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
4 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
5 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
6 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

7
8 **THIRD CAUSE OF ACTION**
9 **FOR FAILURE TO PAY WAGES DUE**
10 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
11 **AGAINST ALL DEFENDANTS**

12 42. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
13 though set forth in full herein.

14 43. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
15 required by 8 Code of Regulations §11160, as set forth hereinabove. As alleged herein, Defendants
16 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

17 44. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
18 Code of Regulations §11160, and Industrial Welfare Commission Order No. 9-2001.

19 45. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
20 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
21 recover such amounts, plus interest thereon, attorneys' fees and costs.

22 46. Labor Code §558(a) provides that any person acting on behalf of an employer who
23 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50.00 for each
24 underpaid employee for each pay period in which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the
26 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for
27 each pay period for which the employee was underpaid in addition to an amount sufficient to recover the
28 underpaid wages.

1 47. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
2 above based upon Defendants' underpayment of minimum and overtime wages. Within the one year
3 immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code
4 §558 52 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which
5 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$5,150.00.

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7 **FOURTH CAUSE OF ACTION**
8 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
9 **LABOR CODE §§510, 1194**
10 **AGAINST ALL DEFENDANTS**

11 48. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
12 though set forth in full herein.

13 49. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
14 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
15 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
16 hours in a single day. It also requires employers to pay their non-exempt employees overtime
17 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
18 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
19 consecutive day of work.

20 50. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
21 compensation required by Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare
22 Commission Order No. 9-2001.

23 51. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
24 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff the requisite
25 overtime wages.

26 52. At all relevant times, Defendants required Plaintiff to work 10-20 hours of overtime per
27 week, for which he was not paid the overtime rate. He was not paid approximately \$637.50 overtime
28 wages per pay cycle, which was weekly.

1 53. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
2 of \$132,600.00, or \$33,150.00 per year in unpaid overtime wages.

3 54. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
4 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
5 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

6
7 **FIFTH CAUSE OF ACTION**
8 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
9 **LABOR CODE §2802**
10 **AGAINST ALL DEFENDANTS**

11 55. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
12 though set forth in full herein.

13 56. Pursuant to Labor Code §450(a), "no employer...may compel or coerce any employee. . .
14 to patronize Plaintiff's or her employer, or any other person, in the purchase of any thing of value."

15 57. Pursuant to Labor Code §2802(a), "an employer shall indemnify Plaintiff's or her
16 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
17 discharge of Plaintiff's or her duties, or of Plaintiff's or her obedience to the directions of the employer."

18 58. Plaintiff was required by Defendants to expend Plaintiff's personal funds because of the
19 duties required by Defendants, as alleged hereinabove.

20 59. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
21 for all necessary expenditures incurred in the performance of his duties.

22 60. Defendants have failed and refused to reimburse Plaintiff for all necessary business
23 expenditures, including Plaintiff's mileage.

24 61. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
25 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
26 aforementioned expenditures.

27 62. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
28 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial, but estimated as

1 follows: Defendants failed to reimburse Plaintiff approximately \$13.88 per week in mileage for each of
2 the weeks of Plaintiff's employment. In the four years preceding this action, therefore, Defendants have
3 at the very least failed to reimburse Plaintiff between approximately \$2,887.04.

4 63. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
5 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
6 expenditure or loss.

7 64. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
8 reasonable attorneys' fees and costs incurred in this action.

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10 **SIXTH CAUSE OF ACTION**
11 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
12 **LABOR CODE §§226.7, 512**
13 **AGAINST ALL DEFENDANTS**

14 65. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
15 though set forth in full herein.

16 66. Labor Code §512 requires employers to provide every employee with an uninterrupted
17 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

18 67. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
19 rest period of not less than 10 minutes, for every period worked in excess of four hours.

20 68. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
21 was thereby entitled to take uninterrupted 30-minute meal periods and 10-minute rest periods on each
22 day of work.

23 69. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
24 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and
25 Industrial Welfare Commission Order No. 9-2001, as follows:

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1 70. Plaintiff's statutory 30-minute meal periods were interrupted and cut short approximately
2 2 times per week for 52 weeks, or on approximately 104 days. During this same time period, Plaintiff
3 was not permitted and not advised of Plaintiff's right to take one or more of Plaintiff's statutory 10-
4 minute rest periods for days on which plaintiff worked for at least four hours.

5 71. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
6 period is \$8,840.00, or \$2,210.00 per year.

7 72. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
8 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

9 73. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
10 such amounts in the combined amount of \$8,840.00 pursuant to Labor Code §226.7(b), plus interest
11 thereon and costs of suit.

12
13 **SEVENTH CAUSE OF ACTION**
14 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
15 **LABOR CODE §§226 ET SEQ.**
16 **AGAINST ALL DEFENDANTS**

17 74. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 75. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
20 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
21 total deductions and net wages earned. An employer who violates these code sections is liable to its
22 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
23 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
24 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
25 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
26 at all.

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1 76. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
2 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
3 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

4 77. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
5 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
6 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
7 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
8 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
9 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
10 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
11 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
12 of the required information, including hours actually worked.

13 78. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

14 79. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
15 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
16 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
17 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
18 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
19 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
20 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
21 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

22 80. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
23 approximately 52 times during the last year that Plaintiff worked for Defendants. Consequently,
24 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
25 amount of \$4,000.00, whichever is greater.

26 81. In addition thereto, Plaintiff is entitled civil penalties pursuant to Labor Code §226.3.

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1 82. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
2 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
3 applicable provisions, as well as attorneys' fees and costs.

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5 **EIGHTH CAUSE OF ACTION**
6 **FOR WAITING TIME PENALTIES**
7 **LABOR CODE §§201-203**
8 **AGAINST ALL DEFENDANTS**

9 83. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
10 though set forth in full herein.

11 84. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
12 other compensation due immediately upon termination or within 72 hours of resignation, as required.
13 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
14 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
15 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
16 203.

17 85. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
18 203.

19 86. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
20 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
21 more than \$5,100.00 in wait time penalties, calculated based on 30 days of regular weekly wages
22 including overtime.

23 87. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,100.00 in
24 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
25 fees and costs.

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NINTH OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
AGAINST ALL DEFENDANTS

88. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

89. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

90. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

91. On January 14, 2020, more than 63 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

92. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

93. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

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1 94. These penalties recoverable for Plaintiff alone totals approximately \$180,000.00. Plaintiff
2 may also seek these same penalties on behalf of all other aggrieved employees.

3 95. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
4 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

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6 **TENTH CAUSE OF ACTION**

7 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

8 **LABOR CODE §1198.5**

9 **AGAINST ALL DEFENDANTS**

10 96. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

12 97. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
13 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
14 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

15 98. On June 25, 2015, Plaintiff made a written request to inspect or receive a copy of
16 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

17 99. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
18 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within
19 the time required by Labor Code §1198.5, or ever.

20 100. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
21 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

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ELEVENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

101. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

102. Defendants' violations of Industrial Welfare Commission Order No. 16-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198.5, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

103. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

104. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

3. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 9-2001 in the amount of no less than \$132,600.00;

4. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$5,150.00;

5. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the amount of no less than \$2,887.40, plus interest;

6. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$8,840.00;

7. For damages pursuant to Labor Code §226 in the amount of no less than \$8,840.00;

8. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount according to proof;

9. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than \$5,100.00;

10. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than \$180,000.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees, estimated to exceed \$1,500,000.00;

11. For statutory penalties pursuant to Labor Code §1198.5 in the amount of no less than \$750.00;

12. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;

1 13. For injunctive relief compelling Defendants to report to federal and state authorities wages
2 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
3 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
4 this in an amount according to the proof;

5 14. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
6 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
7 compensation in accordance with the law;

8 15. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
9 any other basis;

10 16. For post-judgment interest; and

11 17. For any other relief that is just and proper.

12
13 DATED: July 2, 2020

THE DOMINGUEZ FIRM, LLP

14
15 By: 

16 Jace H. Kim, Esq.
17 Carlos A. Perez, Esq.
18 Attorneys for Plaintiff
19 Adan Torres

20 **JURY TRIAL DEMANDED**

21 Plaintiff Adan Torres demands trial of all issues by jury.

22 DATED: July 2, 2020

THE DOMINGUEZ FIRM, LLP

23
24 By: 

25 Jace H. Kim, Esq.
26 Carlos A. Perez, Esq.
27 Attorneys for Plaintiff
28 Adan Torres