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**ELECTRONICALLY FILED**  
 Superior Court of California  
 County of Alameda  
 08/04/2022

Chad Finke, Executive Officer / Clerk of the Court  
 By: L. Wiley Deputy

Attorneys for Plaintiff Corey Jones, individually and on behalf of all similarly situated individuals, on behalf of the general public, and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

[ADDITIONAL COUNSEL IN FOLLOWING PAGE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF ALAMEDA**

COREY JONES, EDDIE FAIRLEY,  
 DEMETREIA GRAY, individually, and on  
 behalf of other members of the general public  
 similarly situated and all "aggrieved  
 employees" pursuant to Labor Code § 2698 *et seq.*

Plaintiffs,

v.

DAA DRAEXLMAIER AUTOMOTIVE OF  
 AMERICA LLC, a South Carolina limited  
 liability corporation; DAN DRAEXLMAIER  
 AUTOMOTIVE OF NORTH AMERICA  
 LLC, a South Carolina limited liability  
 corporation; and DOES 1 through 10,  
 inclusive,

Defendants.

Case No.: HG20062125

*Assigned to the Honorable Evelio Grillo,  
 Dept. 21*

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

**1. FAILURE TO PAY ALL WAGES  
 (LABOR CODE §§ 246, 510, 1197, 1197.1,  
 1194, 1194.2, AND 1198)**

**2. FAILURE TO PROVIDE REST  
 PERIODS OR COMPENSATION IN LIEU  
 THEREOF (LABOR CODE § 226.7; IWC  
 WAGE ORDER 1-2001)**

**3. FAILURE TO PROVIDE MEAL  
 PERIODS OR COMPENSATION IN LIEU  
 THEREOF (LABOR CODE §§ 226.7, 510,  
 512, 1174(d), AND 1194; IWC WAGE  
 ORDER 1-2001)**

**4. KNOWING AND INTENTIONAL  
 FAILURE TO COMPLY WITH  
 ITEMIZED EMPLOYEE WAGE  
 STATEMENT PROVISIONS (LABOR  
 CODE § 226(a), (e))**

**5. KNOWING AND INTENTIONAL  
 FAILURE TO KEEP REQUISITE**

**PAYROLL RECORDS (LABOR CODE § 1174(d))**

**6. FAILURE TO REIMBURSE EXPENSES (LABOR CODE §§ 2800 AND 2802)**

**7. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

**8. FAILURE TO PAY WAGES DURING EMPLOYMENT (LABOR CODE § 204)**

**9. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

**10. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 218.5, 226.3, AND 558**

**DEMAND FOR JURY TRIAL**

*Complaint Filed: May 11, 2020*

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Attorneys for Plaintiff Demetreia Gray

1 Plaintiffs COREY JONES, EDDIE FAIRLEY, and DEMETREIA GRAY (collectively,  
2 “Plaintiffs”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff  
3 Class”), on behalf of the general public, and as “aggrieved employees” under the Labor Code Private  
4 Attorneys General Act of 2004, complain of Defendants, and each of them, as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382  
8 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and all other non-exempt employees who work  
9 or formerly worked for DAA DRAEXLMAIER AUTOMOTIVE OF AMERICA LLC, a South  
10 Carolina limited liability corporation, DAN DRAEXLMAIER AUTOMOTIVE OF NORTH  
11 AMERICA LLC, a South Carolina limited liability corporation, and any subsidiaries or affiliated  
12 companies (hereinafter collectively referred to as “Defendants”) within the State of California.

13 2. For at least four (4) years prior to the filing of this action and continuing to the present  
14 (the “liability period”) Defendants have had a consistent policy of failing to pay all minimum,  
15 overtime, sick pay, and meal period and rest period premium wages due to Class Members (as defined  
16 below); provide legally compliant meal and rest periods or compensation in lieu thereof to Class  
17 Members; provide accurately itemized wage statements to Class Members; provide requisite payroll  
18 records to Class Members; failing to pay all expense reimbursement due to Class Members; and to  
19 timely pay wages during employment and upon separation of employment to Class Members.

20 3. Plaintiffs, on behalf of themselves and members of the Class, brings this action  
21 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 226(a), 226.3, 226.7, 510, 512, 551, 552,  
22 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 seeking compensation for all unpaid  
23 wages, liquidated damages, unreimbursed expenses, statutory penalties, injunctive and other equitable  
24 relief, and reasonable attorneys’ fees and costs.

25 4. Plaintiffs, on behalf of themselves and members of the Class and pursuant to Business  
26 & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all  
27 benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement to Class  
28 Members.

5. Plaintiffs, on behalf of themselves and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seek civil penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiffs and Class Members in Alameda County, California.

## II.

## PARTIES

### A. Plaintiffs

7. Plaintiff COREY JONES was employed by Defendants from March 2019 through December 2019 in Alameda County, California.

8. Plaintiff EDDIE FAIRLEY was employed by Defendants from November 2017 through July 2017 in Alameda County, California.

9. Plaintiff DEMETREIA GRAY was employed by Defendants from January 2018 through October 2019 in Alameda County, California.

During their work with Defendants, Plaintiffs were:

- a. Willfully denied the payment of all minimum, overtime, sick pay, and rest period and meal period premium wages;
- b. Willfully denied rest periods or compensation in lieu thereof;
- c. Willfully denied meal periods or compensation in lieu thereof;
- d. Willfully denied accurately itemized wage statements;
- e. Willfully denied requisite payroll records;
- f. Willfully denied the payment of all expense reimbursement due; and
- g. Denied the timely payment of wages during employment and upon separation of their employment.

## B. Defendants

10. Defendant DAA DRAEXLMAIER AUTOMOTIVE OF AMERICA LLC is a South Carolina limited liability company. Defendant DAA DRAEXLMAIER AUTOMOTIVE OF

1 AMERICA LLC employed Plaintiffs and Class Members throughout the State of California,  
2 including in Alameda County, California.

3 11. Defendant DAN DRAEXLMAIER AUTOMOTIVE OF NORTH AMERICA LLC is  
4 a South Carolina limited liability company. Defendant DAN DRAEXLMAIER AUTOMOTIVE OF  
5 NORTH AMERICA LLC employed Plaintiffs and Class Members throughout the State of California,  
6 including in Alameda County, California.

7 12. The true names and capacities, whether individual, corporate, associate, or otherwise,  
8 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who  
9 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs  
10 are informed and believe, and based thereon allege, that each of the Defendants designated herein as  
11 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will  
12 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants  
13 designated hereinafter as DOES when such identities become known.

14 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
15 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
16 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
17 legally attributable to the other Defendants.

18 14. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting  
19 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more  
20 provisions of the California Labor Code as alleged herein.

### 21 III.

#### 22 CLASS ACTION ALLEGATIONS

23 15. Plaintiffs brings this action on behalf of themselves, and all others similarly situated  
24 as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the  
25 following class composed of and defined as follows:

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27 \\\

28 \\\

## THE CLASS

All persons employed by Defendants in California as non-exempt employees at any time since the date four years preceding the filing of this Action to final judgment.

16. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

17. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

### **A. Numerosity**

18. The potential members of the Class as defined are so numerous that joinder of all the members the Class is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within the Class definition.

19. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiffs allege Defendants' employment records would provide information as to the number and location of members of the Class. Joinder of members of the Class is not practicable.

### **B. Commonality**

20. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay Plaintiffs and Class Members all wages due, in violation of Labor Code §§ 246, 510, 512, 1194, 1194.2, 1197, 1197.1, and 1198;

- 1 b. Whether Defendants failed to properly provide rest periods or compensation in  
2 lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §  
3 226.7 and IWC Wage Order 1-2001;
- 4 c. Whether Defendants failed to properly provide meal periods or compensation  
5 in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§  
6 226.7, 512, 1174(d), and IWC Wage Order 1-2001;
- 7 d. Whether Defendants required Plaintiffs and the other Class Members to work  
8 over eight (8) hours per day, over forty (40) hours per week, and/or six (6)  
9 consecutive days per workweek and failed to pay the legally required overtime  
10 compensation to Plaintiffs and the other Class Members;
- 11 e. Whether Defendants failed to use the shift differentials/bonus wages/non-  
12 discretionary bonuses/non-discretionary performance pay/other non-base  
13 hourly wages to calculate the regular rate of pay used to calculate the overtime  
14 rate for the payment of overtime wages where Plaintiffs and the other Class  
15 Members earned shift differentials/bonus wages/non-discretionary  
16 bonuses/non-discretionary performance pay/other non-base hourly wages and  
17 overtime wages in the same workweek.
- 18 f. Whether Defendants failed to provide Plaintiffs and Class Members with  
19 accurately itemized wage statements, in accordance with Labor Code § 226(a)  
20 and (e);
- 21 g. Whether Defendants kept complete and accurate payroll records as required by  
22 California Labor Code, including, *inter alia*, section 1174(d);
- 23 h. Whether Defendants failed to pay reporting time pay to Plaintiffs and the other  
24 Class Members;
- 25 i. Whether Defendants failed to reimburse Plaintiffs and Class Members for  
26 necessary business expenses incurred in direct consequence of the discharge  
27 of their duties, in violation of Labor Code §§ 2800 and 2802;  
28

- j. Whether Defendants failed to timely pay Plaintiffs and Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203;
- k. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class Members during their employment, in violation of Labor Code § 204; and
- l. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

**C. Typicality**

21. The claims of the named Plaintiffs are typical of the claims of members of the Class. Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

**D. Adequacy of Representation**

22. Plaintiffs will fairly and adequately represent and protect the interests of members of the Class. Counsel who represent Plaintiffs are competent and experienced in litigating large employment class actions.

**E. Superiority of Class Action**

23. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL WAGES**

6 **(LABOR CODE §§ 246, 510, 512, 1194, 1194.2, 1197, 1197.1, AND 1198 AND IWC WAGE**  
7 **ORDER 1-2001)**

8 25. Plaintiffs incorporate paragraphs 1 through 24 of this Complaint as though fully set  
9 forth herein.

10 26. Labor Code § 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage  
11 Order provide that it is unlawful to employ persons without compensating them at a rate of pay either  
12 time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours  
13 worked by the person on a daily or weekly basis.

14 27. Specifically, the applicable IWC Wage Order provides that Defendants are and were  
15 required to pay Plaintiffs and the other Class Members, and working more than eight (8) hours in a  
16 day, more than forty (40) hours in a workweek, and/or more than six (6) consecutive days in a  
17 workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day  
18 or more than forty (40) hours in a workweek.

19 28. The applicable IWC Wage Order further provides that Defendants are and were  
20 required to pay Plaintiffs and the other Class Members overtime compensation at a rate of two times  
21 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

22 29. Labor Code § 510 provides that, “any work in excess of eight hours in one workday  
23 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the  
24 seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
25 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day  
26 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In  
27 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated  
28 at the rate of no less than twice the regular rate of pay of an employee.” Labor Code § 1194 provides

1 that “any employee receiving less than the legal minimum wage or the legal overtime compensation  
2 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount  
3 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s  
4 fees, and costs of suit.”

5 30. During the liability period, Plaintiffs and the other Class Members worked in excess  
6 of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6)  
7 consecutive days in a workweek.

8 31. During the liability period, Defendants failed to properly compute shift differentials,  
9 bonus wages, non-discretionary bonuses, non-discretionary performance pay and other non-base  
10 hourly wages earned by Plaintiffs and Class Members into their regular rate of pay for purposes of  
11 paying them overtime at the correct rates, in violation of Labor Code §§ 510, 1194, and 1198.  
12 Defendants failed to properly blend shift differentials, bonus wages, non-discretionary bonuses, non-  
13 discretionary performance pay and other non-base hourly wages and instead paid Plaintiffs and Class  
14 Members overtime based *only* on the base hourly rate of pay, thus depriving Plaintiffs and Class  
15 Members of all overtime and double time wages earned, in violation of Labor Code §§ 510, 1194,  
16 and 1198. Defendants also failed to blend shift differentials, bonus wages, non-discretionary bonuses,  
17 non-discretionary performance pay and other non-base hourly wages earned by Plaintiffs and Class  
18 Members into their sick pay rate, yielding an underpayment, in violation of Labor Code §§ 246, 510,  
19 1194, and 1198. Defendants also failed to blend shift differentials, bonus wages, non-discretionary  
20 bonuses, non-discretionary performance pay and other non-base hourly wages earned by Plaintiffs  
21 and Class Members into their meal period premium pay rate, yielding an underpayment of wages, in  
22 violation of Labor Code §§ 510, 512, 1194, and 1198.

23 32. Furthermore, Defendants also fail to pay all minimum wages due and owing to  
24 Plaintiffs and Class Members, in violation of Labor Code §§ 1194, 1197, 1197.1, and 1198 and IWC  
25 Wage Order No. 1-2001 § 4.

26 33. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 1-  
27 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in  
28 a payroll period is unlawful.

34. During the liability, Defendants knew or should have known that Plaintiffs and the other Class Members performed work off the clock for which they were not compensated.

35. During the liability period, Defendants knew or should have known that Plaintiffs and the other Class Members were entitled to pay equal to half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for each workday in which Plaintiffs and the other Class Members were required to report to work and were furnished less than half the usual or scheduled day's work.

36. During the liability period, Defendants knew or should have known that Plaintiffs and the other Class Members were entitled to pay equal to no less than two (2) hours at Plaintiffs' and the other Class Members regular rate of pay for each day in which Plaintiffs and the other Class Members were required to report for work a second time in one workday and were furnished less than two hours of work on the second reporting.

37. As a result of the unlawful acts of Defendants in willfully failing to pay all wages, Plaintiffs and Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code §§ 1194, 1197, 1197.1, and 1198 and IWC Wage Order No. 1-2001, and liquidated damages in accordance with Labor Code § 1194.2.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

**V.**

## SECOND CAUSE OF ACTION

**PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

## FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

**(LABOR CODE § 226.7 AND IWC WAGE ORDER 1-2001)**

38. Plaintiffs incorporate paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 1-2001.

40. Defendants failed to pay premium wages to Plaintiffs and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 1-2001. Plaintiffs and Class Members were routinely unable, and not authorized, to take a 10-minute rest break for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest break. When rest periods were provided, Plaintiffs and Class Members were not permitted to leave the work premises, resulting in on-duty rest periods subject to Defendants' control. This violates Labor Code § 226.7 and IWC Wage Order 1-2001.

41. Pursuant to Labor Code § 226.7 and IWC Wage Order 1-2001, Plaintiffs seek the payment of all rest period compensation which Plaintiffs and Class Members are owed, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

## VI.

### THIRD CAUSE OF ACTION

**PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

## FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

**(LABOR CODE §§ 226.7, 512, AND 1174(d))**

**AND IWC WAGE ORDER 1-2001)**

42. Plaintiffs incorporate paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and IWC Wage Order 1-2001.

44. Defendants failed to pay premium wages to Plaintiffs and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 1-2001. Plaintiffs and Class Members were routinely denied, and not authorized to take, an uninterrupted, timely 30-minute meal period for every shift worked exceeding five hours in duration, and a second, uninterrupted, timely 30-minute meal period for every shift worked exceeding ten hours in duration, but were not paid premium wages of one hour's pay for each missed meal period. Defendants also

1 failed to maintain meal period records showing when meal periods were taken. This violates Labor  
2 Code §§ 226.7, 512, and 1174(d) and IWC Wage Order 1-2001.

3 45. Pursuant to Labor Code §§ 226.7, 512, and 1174(d) and IWC Wage Order 1-2001,  
4 Plaintiffs seek the payment of all meal period compensation and wages which Plaintiffs and Class  
5 Members are owed, according to proof.

6 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

7 **VII.**

8 **FOURTH CAUSE OF ACTION**

9 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

10 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

11 **EMPLOYEE WAGE STATEMENT PROVISIONS**

12 **(LABOR CODE § 226(a), (e))**

13 46. Plaintiffs incorporate paragraphs 1 through 45 of this Complaint as though fully set  
14 forth herein.

15 47. Section 226(a) of the California Labor Code requires Defendants to provide wage  
16 statements to employees. In those wage statements, Defendants must provide an accurate itemized  
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)  
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
19 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee  
20 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period  
21 for which the employee is paid, (7) the name of the employee and only the last four digits of his or  
22 her social security number or an employee identification number other than a social security number,  
23 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates  
24 in effect during the pay period and the corresponding number of hours worked at each hourly rate by  
25 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §  
26 226(a).

27 48. Defendants failed to issue Plaintiffs and members of the Class wage statements that  
28 fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiffs and Class

1 Members were not paid with all wages due, including all overtime and double-time wages due,  
2 premium meal and rest period wages due, and reporting time pay due, as detailed above, such that  
3 their wage statements failed to accurately set forth all gross wages earned, in violation of Labor Code  
4 § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in  
5 violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period  
6 and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9). Separately,  
7 Defendants paid Plaintiffs and Class Members shift differential wages (“Ca Shift Diff O”) at a rate of  
8 \$1.50 and meal period penalty wages (“Camealpenalty”) at a rate of \$1.00. When shift differential  
9 wages and meal period penalty wages are paid, among other categories of compensation, additional  
10 hours worked are listed on the wage statements that are already encompassed in the listed hours  
11 worked at the base rates of pay. Adding up the total hours worked as set forth on the wage statement  
12 does not yield the correct number of actual hours worked by the employee. It is impossible to ascertain  
13 total hours worked from the wage statements alone because of the multiple conflicting entries. The  
14 wage statements also separately violate Labor Code § 226(a)(9) because they list inaccurate rates of  
15 pay. For example, Plaintiffs’ wage statements include rate entries for “Ca Shift Diff O” at \$1.50 and  
16 “Camealpenalty” at \$1.00, both of which are inaccurate.

17 49. As a consequence of Defendants’ willful conduct in failing to provide Class Members  
18 with accurate itemized wage statements, Plaintiffs and members of the Class have been injured  
19 because they have not been paid all wages due and were issued wage statements which do not reflect,  
20 and fail to state, all information required by Labor Code § 226(a). The missing information cannot be  
21 discerned at all from the face of the wage statements themselves. As a result, Plaintiffs and Class  
22 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual  
23 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each  
24 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and  
25 are entitled to an award of costs and reasonable attorneys’ fees pursuant to Labor Code § 226(h).

26 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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**VIII.**

**FIFTH CAUSE OF ACTION**

**PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

**KNOWING AND INTENTIONAL FAILURE TO KEEP REQUISITE PAYROLL**

**RECORDS (LABOR CODE § 1174(d))**

50. Plaintiffs incorporate paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Pursuant to California Labor Code § 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

52. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other Class Members.

53. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiffs and the other Class Members have suffered injury and damages to their statutorily-protected rights.

54. More specifically, Plaintiffs and the other Class Members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE EXPENSES (LABOR CODE §§ 2800 AND 2802)

55. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint as though fully set forth herein.

56. Pursuant to California Labor Code §§ 2800 and 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

57. As a proximate result of the aforementioned violations, Plaintiffs and members of the Class have been damaged in an amount according to proof at the time of trial.

58. Pursuant to Labor Code §§ 2800 and 2802, Plaintiffs and members of the Class are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

59. Plaintiffs incorporate paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,

as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

61. More than 30 days have passed since Plaintiffs and certain Class Members have left Defendants' employ.

62. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiffs and certain Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

## **XI.**

### **EIGHTH CAUSE OF ACTION**

#### **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

#### **FAILURE TO PAY ALL WAGES DUE DURING EMPLOYMENT (LABOR CODE § 204)**

63. Plaintiffs incorporate paragraphs 1 through 62 of this Complaint as though fully set forth herein.

64. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16<sup>th</sup> and the 26<sup>th</sup> day of the month during which the labor was performed.

65. California Labor Code § 204 provides that all wages earned by any person in any employment between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, other than those wages due upon termination of any employee, are due and payable between the 1<sup>st</sup> and the 10<sup>th</sup> of the following month.

66. California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

67. During the liability period, Defendants intentionally and willfully failed to pay Plaintiffs and the other Class Members all wages due to them, within any time period permissible under California Labor Code § 204.

68. Plaintiffs and the other Class Members are entitled to recover all remedies available for violations of California Labor Code § 204.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

XII.

## NINTH CAUSE OF ACTION

## PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

## UNFAIR COMPETITION PURSUANT TO

**BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

69. Plaintiffs incorporate paragraphs 1 through 68 of this Complaint as though fully set forth herein.

70. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and members of the Class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

71. Plaintiffs are “persons” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

72. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

73. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due and reimbursing all business expenses incurred are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

1           74. Defendants have violated statutes and public policies. Through the conduct alleged  
2 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
3 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
4 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,  
5 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
6 guaranteed to all employees under law.

7           75. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
8 §17200 *et seq.* of the Business & Professions Code.

9           76. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
10 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §  
11 17200 *et seq.* of the Business & Professions Code.

12           77. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others  
13 similarly situated have been damaged in a sum as may be proven.

14           78. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
15 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court  
16 should make such orders or judgments, including the appointment of a receiver, as may be necessary  
17 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or  
18 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited  
19 to, disgorgement of profits which may be necessary to restore Plaintiffs and Class Members to the  
20 money Defendants have unlawfully failed to pay.

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**XIII.**

**TENTH CAUSE OF ACTION**

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF  
LABOR CODE §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197,  
1197.1, 1198, 2800, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR  
VIOLATIONS OF LABOR CODE §§ 210, 218.5, 226.3, AND 558**

79. Plaintiffs incorporate paragraphs 1 through 78 of this Complaint as though fully set forth herein.

80. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.* Further, Plaintiffs allege that Defendants fail to pay Plaintiffs and other Aggrieved Employees all wages timely during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiffs and other Aggrieved Employees on a bi-weekly basis, but failed to issue them their wages within seven calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d). Instead, wages were issued eight or more days after the conclusion of the pay period. This subjects Defendants to penalties as authorized by Labor Code § 210.

81. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the penalties set forth in Labor Code §§ 210, 218.5, 226.3, and 558.

82. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

83. On February 27, 2020, Plaintiff Jones sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*

84. On June 17, 2020, Plaintiff Fairley sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*

85. On May 28, 2020, Plaintiff Gray sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*

86. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of February 27, 2020, June 17, 2020, and May 28, 2020. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

XIV.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 246, 510, 512, 1194, 1194.2, 1197.1, and 1198 in the amount of all unpaid minimum, overtime, sick pay, and rest period and meal period premium wages due to Plaintiffs and Class Members;

2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiffs and Class Members pursuant to Labor Code § 226.7;

3. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and Class Members;

4. For penalties pursuant to Labor Code §§ 203 and 204 for Plaintiffs and Class Members who are no longer employed by Defendants;

- 1           5.     For reimbursement of all expenses incurred by Plaintiffs and Class Members pursuant  
2 to Labor Code § 2802;
- 3           6.     An award of prejudgment and post-judgment interest;
- 4           7.     For restitution for unfair competition pursuant to Business & Professions Code §  
5 17200 *et seq.* for Plaintiffs and Class Members;
- 6           8.     For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other  
7 Aggrieved Employees;
- 8           9.     An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)  
9 and other applicable law;
- 10          10.    An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable  
11 law; and
- 12          11.    Such other and further relief as this Court may deem just and proper.

13 Dated: August 4, 2022

Respectfully submitted,

14  
15 GAINES & GAINES  
A Professional Law Corporation

16  
17 By: *Daniel F. Gaines*  
DANIEL F. GAINES  
18 EVAN S. GAINES  
Attorneys for Plaintiff Corey Jones

19  
20 Dated: ~~June 21, 2022~~  
August 4, 2022

LAWYERS for JUSTICE, PC

21 By: *Edwin Aiwasian*  
22 EDWIN AIWAZIAN  
Attorney for Plaintiff Eddie Fairley

23  
24 Dated: August 4, 2022

MATERN LAW GROUP, PC

25 By: /s/ Kayvon Sabourian  
26 MATTHEW J. MATERN  
27 LAUNA ADOLPH  
KAYVON SABOURIAN  
28 Attorneys for Plaintiff Demetreia Gray

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: August 4, 2022

Respectfully submitted,

GAINES & GAINES  
A Professional Law Corporation

By: *Daniel F. Gaines*  
DANIEL F. GAINES  
EVAN S. GAINES  
Attorneys for Plaintiff Corey Jones

Dated: ~~June 21, 2022~~  
August 4, 2022

LAWYERS *for* JUSTICE, PC

By: *Edwin Aiwozian*  
EDWIN AIWAZIAN  
Attorney for Plaintiff Eddie Fairley

Dated: August 4, 2022

MATERN LAW GROUP, PC

By: /s/ Kayvon Sabourian  
MATTHEW J. MATERN  
LAUNA ADOLPH  
KAYVON SABOURIAN  
Attorneys for Plaintiff Demetreia Gray

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the  
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100 Westlake Village, CA 91362.

4 \_\_\_\_\_ (For messenger) my business address is:

5 On August 4, 2022, I served the foregoing document described as **FIRST AMENDED CLASS AND**  
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof  
enclosed in sealed envelopes addressed as follows:

|                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>7 <b>Jennifer G. Redmond, Esq.</b><br/><b>Brian S. Fong, Esq.</b><br/><b>Luis F. Arias, Esq.</b><br/><b>SHEPPARD, MULLIN, RICHTER &amp; HAMPTON</b><br/><b>LLP</b><br/><b>A Limited Liability Partnership Including</b><br/><b>Professional Corporations</b><br/><b>Four Embarcadero Center, 17th Floor</b><br/><b>San Francisco, California 94111-4109</b></p> | <p>7 <b>Edwin Aiwazian, Esq.</b><br/><b>LAWYERS for JUSTICE, PC</b><br/><b>410 West Arden Avenue, Suite 203</b><br/><b>Glendale, CA 91203</b></p> |
| <p>12 <b>Matthew J. Matern, Esq.</b><br/><b>Launa Adolph, Esq.</b><br/><b>Kayvon Sabourian, Esq.</b><br/><b>MATERN LAW GROUP, PC</b><br/><b>1230 Rosecrans Avenue, Suite 200</b><br/><b>Manhattan Beach, CA 90266</b></p>                                                                                                                                          |                                                                                                                                                   |

15 ☒

16 (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was  
17 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection  
and processing correspondence for mailing. It is deposited with United States postal service on that same  
18 day in the ordinary course of business. I am aware that on motion of party served, service is presumed  
invalid if postal cancellation date or postage meter date is more that one day after date of deposit for  
mailing in affidavit.

19 \_\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or  
20 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an  
authorized carrier or driver authorized by the express carrier to receive documents.

21 \_\_\_\_\_ (BY FACSIMILE TRANSMISSION) On \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m., at Westlake Village, California, I  
22 served the above-referenced document on the above-stated addressee by facsimile transmission pursuant  
to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine  
23 was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (\_\_\_\_) \_\_\_\_-\_\_\_\_.  
A transmission report was properly issued by the sending facsimile machine, and the transmission was  
24 reported as complete and without error. Copies of the facsimile transmission cover sheet and the  
transmission report are attached to this proof of service.

25 \_\_\_\_\_ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-  
26 delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

27 \_\_\_\_\_ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic  
28 transmission via email on the counsel of record listed above.

1 I certify that the above document was printed on recycled paper.

2 I declare under penalty of perjury that the foregoing is true and

3 correct. Executed on August 4, 2022, at Westlake Village, California.

4 Beatriz Franco

5 BEATRIZ FRANCO