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DUGLAS ESQUIVEL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DUGLAS ESQUIVEL, individually and as a
private attorney general;

Plaintiff,

vs.

MCI, INC. dba MARTINEZ
CONSTRUCTION, INC., a California
corporation; DAVID JOSEPH MARTINEZ,
an individual; and DOES 1 through 50,
inclusive,

Defendants.

20STCV14663
COMPLAINT FOR:

- (1) CONSTRUCTIVE WRONGFUL TERMINATION**
- (2) RETALIATION (CALIFORNIA LABOR CODE § 98.6 AND 1102.5)**
- (3) VIOLATION OF CALIFORNIA LABOR CODE §§ 510 AND 1198 (UNPAID OVERTIME)**
- (4) VIOLATION OF CALIFORNIA LABOR CODE §§ 1194, 1197 AND 1197.1 (UNPAID MINIMUM WAGES)**
- (5) VIOLATION OF CALIFORNIA LABOR CODE § 226.7 (UNPAID REST PERIOD PREMIUMS)**
- (6) VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 AND 512(a) (UNPAID MEAL PERIOD PREMIUMS)**
- (7) VIOLATION OF CALIFORNIA LABOR CODE § 226(a) (FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS)**
- (8) VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202 AND 203 (FINAL WAGES NOT TIMELY PAID)**
- (9) VIOLATION OF CALIFORNIA LABOR CODE § 2802 (FAILURE TO REIMBURSE EXPENSES)**

(10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.

(11) FAILURE TO PROVIDE
PERSONNEL RECORDS

(12) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ

DEMAND FOR TRIAL BY JURY

Plaintiff DUGLAS ESQUIVEL (“Plaintiff”), as an individual, and as a private attorney
general alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
Los Angeles, State of California.

2. Defendant MCI, INC. dba MARTINEZ CONSTRUCTION, INC. (“MCI”), and at all
times mentioned herein was, a corporation organized and existing under the laws of the State of
California, doing business in the County of Los Angeles, California.

3. MCI at all times herein mentioned was, (a) conducting business in the County of Los
Angeles, State of California; (b) the employer of Plaintiff consistent with California Labor Code
and Industrial Welfare Commission Wage Orders; and (c) Plaintiff’s employer as defined under
Government Code section 12926 subsection (c).

4. Defendant DAVID JOSEPH MARTINEZ (“David Joseph Martinez”) is, and at all relevant times mentioned herein was, an individual residing in the County of Los Angeles, in the State of California, and the owner, president, chief executive officer, and agent of MCI.

5. The acts alleged herein arose in Los Angeles County, within the State of California.

6. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately caused by its conduct. Doe Defendants 1 through 50, MCI, and David Joseph Martinez are herein collectively referred to as "Defendants."

GENERAL ALLEGATIONS

7. Plaintiff was employed by Defendants from approximately April 2018 through approximately February 2019.

8. Plaintiff was scheduled to work Monday through Friday and required to work at least eight (8) hours per day and often work in excess of twelve (12) hours per day.

9. Plaintiff's responsibilities included finish carpentry and general labor.

10. Plaintiff worked on residential and commercial projects during his tenure with Defendants.

11. Plaintiff and similarly aggrieved current and former non-exempt employees (“Aggrieved Employees”) were required to regularly work more than five (5) hours without being provided a meal period and to work more than ten (10) hours without being provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted

30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved employees to take their lunch after six (6) hours of working.

12. Plaintiff and Aggrieved Employees never waived their rights to a meal period when they worked six (6) or more hours.

13. Plaintiff and Aggrieved Employees never received a second lunch period.

14. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a meal period was missed or interrupted.

15. Because of Defendants' policies and practices, Plaintiff was never able to take an uninterrupted ten (10) minute rest break and was reprimanded every time he asked for one or attempted to take one.

16. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a rest break was missed or interrupted.

17. Plaintiff requested that his supervisors provide him with a ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were denied.

18. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to keep working after they clocked-out for the day to finish their assigned work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock at the end of their respective shifts.

19. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

20. Plaintiff and Aggrieved Employees did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

21. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to include the total number of hours worked by Plaintiff and Aggrieved Employees and the failure to

1 include premium pay for missed and/or interrupted rest and meal breaks.

2 22. Due to Defendants' ongoing failure to provide Plaintiff with all wages earned, lawful
3 meal periods, and lawful rest breaks, Plaintiff had no choice but to resign from his employment
4 with Defendants on or about February 2019.

5 23. Plaintiff never received the missing wages earned upon termination of his employment.

6 24. On or about February 11, 2020, Plaintiff's counsel sent a letter to Defendants, pursuant
7 to California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's personnel file
8 and other documents enumerated in aforementioned code sections. Defendants were required to
9 produce these documents within twenty-one (21) days and thirty (30) from the date of the request
10 respectively and failed to do so.

11 25. On or about February 11, 2020, Plaintiff notified Defendants via certified mail and filed
12 an online PAGA claim notice with the California Labor and Workforce Development Agency
13 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
14 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
15 section 2698 et seq.

16 **FIRST CAUSE OF ACTION**

17 **(Constructive Wrongful Termination)**

18 **(Against All Defendants)**

19 26. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
20 forth above.

21 27. As a result of Defendants' acts and failures to act as alleged herein, Defendants
22 intentionally created and/or knowingly permitted working conditions which were so intolerable or
23 aggravated that a reasonable employer would realize that a reasonable person in Plaintiff's position
24 would be compelled to resign.

25 28. The facts set forth herein above establish that all Defendants are guilty of malice and
26 oppression, warranting an assessment of exemplary damages in an amount appropriate to punish
27 said Defendants and to deter others from engaging in similar misconduct.

28 29. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has

1 sustained and continues to sustain severe emotional pain and suffering, including but not limited
2 to anguish, humiliation, anger, tension, anxiety, depression, and lowered self-esteem, according to
3 proof at trial.

4 30. As a further direct and proximate result of the unlawful conduct, Plaintiff has suffered
5 and continues to suffer loss of income, loss of earning capacity, loss of job opportunity, and other
6 economic damages, according to proof at trial.

7 **SECOND CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 98.6 And 1102.5)**

9 **(Against All Defendants)**

10 31. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
11 forth above.

12 32. Defendants, by and through their managing agents and supervisors, retaliated against
13 Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to
14 a government or law enforcement agency, to a person with authority over the employee or another
15 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

16 33. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o
17 person shall discharge an employee or in any manner discriminate against any employee or
18 applicant for employment because the employee or applicant engaged in any conduct delineated
19 in this chapter.”

20 34. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that
21 “[a]n employer . . . shall not retaliate against an employee for disclosing information , or because
22 the employer believes that the employee disclosed or may disclose information . . . to a person
23 with authority over the employee or another employee who has the authority to investigate,
24 discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to
25 believe that the information discloses a violation of state or federal statute, or a violation of or
26 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
27 the information is part of the employee’s job duties.”
28

1 35. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages
2 from Defendants for injury suffered as a result of the foregoing retaliation.

3 36. During his employment, Plaintiff's counsel served a letter to Defendants requesting
4 Plaintiff's personnel file to investigate Plaintiff's potential claims for violations of California
5 Labor Code and Government Code. Plaintiff's actions are protected from retaliation by statute,
6 including, California's Labor Code.

7 37. In violation of his statutory rights, and, in part, on the basis of Plaintiff's
8 aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff
9 by constructively terminating Plaintiff's employment.

10 38. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against
11 Plaintiff, in part, for his protected actions.

12 39. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been
13 directly and legally caused to suffer actual damages including, but not limited to, substantial losses
14 in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not
15 presently ascertained, in an amount according to proof at the time of trial.

16 40. As a further direct and legal result of the acts and conducts of Defendants, and each of
17 them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish,
18 humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to his
19 damage in an amount according to proof at the time of trial. Plaintiff does not know at this time
20 the exact duration or permanence of said injuries.

21 41. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
22 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
23 engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.

24 42. Defendants, and each of them, also acted in willful and conscious disregard of the
25 rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary
26 damages in an amount according to proof at the time of trial.

27 43. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.
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THIRD CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against All Defendants)

44. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

45. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "...the standard conditions of labor fixed by the commission shall be the ...standard conditions of labor for employees. The employment of any employee ...under conditions of labor prohibited by the order is unlawful."

46. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time and one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

48. The applicable IWC Wage Order further provides that Defendants were required to pay Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

49. California Labor Code section 510 codifies the right to overtime compensation at one-and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

50. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although

1 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

2 51. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to
3 pay Plaintiff this overtime compensation, as required by California law, violates the provisions of
4 California Labor Code sections 510 and 1198, and is therefore unlawful.

5 52. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover their
6 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

7 **FOURTH CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

9 **(Against All Defendants)**

10 53. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
11 forth above.

12 54. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
13 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
14 wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is
15 unlawful.

16 55. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during
17 meal periods and after his scheduled shifts. To the extent that these off-the-clock hours did not
18 qualify for overtime premium payment, Defendants did not even pay minimum wages for those
19 hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and 1197.1.

20 56. Defendants' failure to pay Plaintiff the minimum wage as required violates California
21 Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to
22 recover the unpaid balance of his minimum wage compensation as well as interest, costs, and
23 attorney's fees.

24 57. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover
25 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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FIFTH CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against All Defendants)

58. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

59. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

60. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

61. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3 1/2) hours."

62. During the relevant time period, Defendants required Plaintiff to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked. Defendants' failure to properly staff and coordinate Plaintiff's schedule, forced Plaintiff to work through all or part of his rest breaks.

63. Defendants had no policy and/or practice to pay premiums for missed rest breaks and thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code section 226.7.

64. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code section 226.7.

65. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the rest period was not provided.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against All Defendants)

66. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

67. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's employment by Defendants.

68. At all relevant times herein set forth, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by the applicable IWC Wage Order.

69. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

70. During the relevant time period, Defendants willfully required Plaintiff to work during meal periods and failed to compensate Plaintiff for work performed during meal periods. Moreover, Defendants did not schedule or take any action to relieve Plaintiff of his duties for second meal periods when he worked shifts over 10 hours or more. At the same time, Defendants had a practice and/or policy of not paying all premiums due for meal break violations. As a result Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code section 226.7.

71. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7 and 512(a).

72. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the meal period was not provided.

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1 if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
2 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
3 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
4 unless the employee has given seventy-two (12) hours previous notice of his or her intention to
5 quit, in which case the employee is entitled to his or her wages at the time of quitting.

6 80. During the relevant time period, Defendants willfully failed to pay Plaintiff earned and
7 unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and
8 meal and rest period premium wages, either at the time of discharge, or within seventy-two (72)
9 hours of their leaving Defendants' employ.

10 81. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of
11 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of
12 California Labor Code sections 201 and 202.

13 82. California Labor Code section 203 provides that if an employer willfully fails to pay
14 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
15 continue as a penalty from the due date, and at the same rate until paid or until an action is
16 commenced; but the wages shall not continue for more than thirty (30) days.

17 83. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day
18 they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant
19 to California Labor Code section 203.

20 **EIGHTH CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 2800 and 2802)**

22 **(Against All Defendants)**

23 84. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
24 forth above.

25 85. Labor Code § 2802 requires that an "employer shall indemnify his or her employee for
26 all necessary expenditures or losses incurred by the employee in the direct consequence of the
27 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
28 though unlawful, unless the employee, at the time of obeying the directions, believed them to be

unlawful.”

86. Labor Code § 2802 further provides “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

87. The statute further identifies “necessary expenditures or losses” as “all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

88. Based on Plaintiff’s employment with Defendants, Plaintiff incurred business expenses in the discharge of his duties for Defendants and in obedience to Defendants’ instructions, which includes the use of his own personal tools.

89. As a direct and proximate cause of Defendants’ wrongful conduct, Plaintiff has sustained and will continue to sustain damages in the amount of unreimbursed expenditures and losses, together with interest thereon, attorney’s fees and costs of suit. Plaintiff is entitled to an unpaid balance of expenses owed, penalties plus interest and reasonable attorney’s fees and costs of suit, in an amount to be determined at trial according to proof.

NINTH CAUSE OF ACTION

(Unfair Competition Against All Defendants)

90. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

91. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “*unlawful, unfair or fraudulent business act or practice....*”

92. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200, *et seq.*, by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium

1 pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for
2 rest period violations; (4) willfully failing to reimburse Plaintiff for incurred business expenses
3 in the discharge of his duties in obedience to Defendants' instructions which included the use of
4 his personal tools; (5) willfully failing to timely pay Plaintiff all wages during and at the end of
5 employment; and (6) knowingly failing to furnish Plaintiff with accurate and complete wage
6 statements.

7 93. Defendants' utilization of these unfair and/or unlawful business practice deprived
8 Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or
9 unlawful competition, and provides an unfair advantage over Defendants' competitors who have
10 been and/or are currently employing workers and attempting to do so in honest compliance with
11 applicable wage and hour laws.

12 94. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
13 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
14 any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business
15 and Professions Code §§ 17203, 17208.

16 95. The acts complained of herein occurred within the last four (4) years immediately
17 preceding the filing of the Complaint in this action.

18 96. Plaintiff retained the services of counsel to file this court action to protect his interests,
19 to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby
20 incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under
21 the Code of Civil Procedure § 1021.5.

22 **TENTH CAUSE OF ACTION**

23 **(Failure to Provide Personnel Records Against All Defendants)**

24 97. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
25 forth above.

26 98. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the
27 contents of those personnel records available for inspection to the current or former employee, or
28 his or her representative, at reasonable intervals and at reasonable times, but not later than 30

1 calendar days from the date the employer receives a written request, unless the current or former
2 employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar
3 days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
4 employer's receipt of the written request."

5 99. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer
6 fails to permit a current or former employee, or his or her representative, to inspect or copy
7 personnel records within the times specified in this section, or times agreed to by mutual agreement
8 as provided in this section, the current or former employee or the Labor Commissioner may recover
9 a penalty of seven hundred fifty dollars (\$750) from the employer."

10 100. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
11 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
12 request.

13 101. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
14 the amount of \$750.00 plus attorneys' fees and costs.

15 **ELEVENTH CAUSE OF ACTION**

16 **(PAGA Claims Against All Defendants)**

17 102. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
18 forth above.

19 103. Plaintiff brings this claim as an individual employee and in his capacity as a private
20 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
21 section 2698, et seq. ("PAGA").

22 104. On or about February 11, 2020, Plaintiff notified Defendants via certified mail and filed
23 an online PAGA claim notice with the California Labor and Workforce Development Agency
24 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
25 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
26 section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-772093-20.
27 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
28 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's

1 notice to the LWDA, and thus Plaintiff has exhausted his administrative remedies, thereby
2 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
3 2699.

4 105. During all relevant times for this action, Defendants regularly required Plaintiff and
5 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
6 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
7 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
8 paid for just eight (8) hours in a day or forty (40) hours in a week.

9 106. During all relevant times for this action, Defendants failed to provide uninterrupted
10 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
11 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
12 Employees to stay on duty and never provided an uninterrupted first or second meal break.

13 107. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
14 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

15 108. Although Defendants failed to provide uninterrupted meal and rest breaks as required
16 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
17 those days in which they were not permitted to take a meal and/or rest break which was duty free.

18 109. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
19 properly itemized wage statements including because Defendants failed to include the actual hours
20 worked, the correct rate of pay and the meal and rest period premiums owed.

21 110. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
22 required to pay all wages earned for labor in excess of the normal work period not later than the
23 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
24 Aggrieved Employees all wages due to them within the time period specified by California Labor
25 Code section 204, including premiums owed.

26 111. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
27 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
28 representative action against Defendants to recover the civil penalties due to Plaintiff, other

1 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
2 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
3 for each subsequent violation per employee per pay period for the following Labor Code
4 violations:

- 5 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
6 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 7 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
8 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
9 *seq.*;
- 10 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
11 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
12 512;
- 13 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
14 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
15 512;
- 16 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
17 at end of employment in violation of Labor Code § 203;
- 18 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
19 owed during employment;
- 20 g. Failing to reimburse Plaintiff and Aggrieved Employees for incurred business
21 expenses in the discharge of their duties for Defendants and in obedience to
22 Defendants' instructions, which includes the use of their personal cell phone in
23 violation of Labor Code §§2800 and 2802;
- 24 h. Failing to furnish Plaintiff and other similarly Aggrieved Employees with
25 complete, accurate, itemized wage statements in violation of Labor Code § 226;
26 and for
- 27 i. Failing to maintain accurate records relating to Plaintiff and other similarly
28 Aggrieved Employees work periods, meal periods, total daily hours, hours per pay

period, and applicable pay rates.

112. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;
2. For punitive and exemplary damages according to proof;
3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and Labor Code sections 226, 1174, 1194, 1198, 2668, *et seq.*, 2802, and as allowed by law and according to proof;
4. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as allowed by law and according to proof;
5. For unpaid wages and overtime;
6. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;
7. For costs of suit incurred herein;
8. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed; and
9. For such other and further relief as the Court may deem just and proper.

DATED: April 16, 2020

PAYNE NGUYEN, LLP

By: 

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
DUGLAS ESQUIVEL

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DATED: April 16, 2020

By: Carolyn P.

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