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On Behalf of Himself, And Other Aggrieved
Employees, and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTUAN FERNANDEZ, an individual,
on behalf of himself, all other Aggrieved
Employees, and the general public,

Plaintiff,

vs.

CALOP BUSINESS SYSTEMS, INC., a
California corporation, and DOES 1
through 25, inclusive,

Defendants.

CASE NO. **20STCV21789**

COMPLAINT FOR:

**1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiff ANTUAN FERNANDEZ, an individual, hereby file this Complaint (“Complaint”)
2 against Defendant CALOP BUSINESS SYSTEMS, INC., a California corporation, and Does 1 to 25
3 (hereinafter collectively, “Defendants”). Plaintiff, in his representative capacity, is informed and
4 believes and on the basis of that information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This lawsuit challenges Defendants’ employment practices with respect to their non-
7 exempt hourly workers employed in the State of California, based on Defendants’ policy and practice
8 of denying earned wages, including overtime pay, by way of unlawful rounding and failing to comply
9 with the mandated provisions of the Living Wage Ordinance. Defendants also fail to provide legally
10 compliant rest breaks and fail to reimburse non-exempt, hourly workers for reimbursement of their
11 cell phones. Beginning March 17, 2019 to the present (hereinafter “Relevant Time Period”)
12 Defendants require their employees to be present and perform work in excess of eight hours per day
13 and/or forty hours per work week, but fail to pay them overtime wages accordingly, and further fail to
14 pay such non-exempt employees for all straight time hours they worked. Also, Defendants require
15 such employees to perform work tasks during unpaid breaks, fail to provide rest breaks, fail to timely
16 compensate employees for all wages earned, and fail to properly and accurately calculate overtime
17 and report wages earned, hours worked, and wage rates.

18 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
19 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
20 designated rates for all hours worked.

21 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
22 compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime
23 hours worked.

24 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
25 to provide Plaintiff with adequate off-duty rest periods and rest period compensation in violation of
26 Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 4 section 11.

27 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
28 to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor Code

1 sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

2 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
3 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show
4 all wages earned, all hours worked, or all applicable rates.

5 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
6 to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned and meal
7 breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

8 8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
9 to pay Plaintiff all wages due and owing upon termination of employment including, but not limited
10 to, payment of wages for off-the-clock work, overtime compensation and missed meal and rest periods
11 compensation.

12 9. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the
13 Private Attorneys General Act (“PAGA”), against Defendants for their unlawful employment
14 practices.

15 **PARTIES**

16 ***Plaintiff Antuan Fernandez***

17 10. Plaintiff Antuan Fernandez is an individual over the age of eighteen (18) and is now
18 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of
19 California. Within the Relevant Time Period to on or about April 7, 2020, Mr. Fernandez worked for
20 Defendants in the role of a Security Guard, in Los Angeles County, California. In his role as Security
21 Guard, Plaintiff was classified as a non-exempt, hourly employee.

22 ***Defendant Calop Business Systems, Inc.***

23 11. Plaintiff is informed and believes and based thereon alleges that Calop Business
24 Systems, Inc. is a California corporation and does business as Calop Aeroground Services. Defendants
25 operate at Los Angeles International Airport – part of the airports comprising Los Angeles Worlds
26 Airport (“LAWA”) – and is categorized as an “Airport Employer” for purposes of this lawsuit. Calop
27 is headquartered at 5250 West Century Blvd., Suite 614, Los Angeles, California 90045.

28 ***Defendants Does 1 through 25, Inclusive***

12. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 25, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 25 are believed to be business entities who were also co-employers of the Plaintiff and the other similarly situated, non-exempt hourly employees of Defendants (hereinafter "Aggrieved Employees").

All Defendants

13. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

14. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

15. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers of the Plaintiff and the other Aggrieved Employees.

16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided

1 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
2 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

3 **JURISDICTION AND VENUE**

4 17. This Court has jurisdiction over this matter, and under Code of Civil Procedure section
5 395, venue is proper in that Defendants operate in Los Angeles County, Plaintiff Antuan Fernandez
6 resides in and/or worked in this county and the injuries that are the subject of this lawsuit arose in this
7 county.

8 18. Plaintiff does not seek more than seventy-five thousand dollars (\$75,000) and waives
9 seeking more than seventy-five thousand dollars (\$75,000), including attorneys' fees but excluding
10 costs and interest, as to their share or portion of penalties or any other recovery with respect to the
11 violations alleged herein against Defendants. This case also raises no federal questions.

12 **FACTUAL ALLEGATIONS**

13 ***Background***

14 19. Companies that operate an Air Carrier Operating Permit or a master lease with the
15 LAWA are required to comply with the provisions of the Living Wage Ordinance (Los Angeles
16 Administrative Code, Div. 10, Chapter 1, Art. 11) ("LWO") set forth in the Los Angeles
17 Administrative Code as an "Airport Employer." Plaintiff is informed and believes that Defendants
18 hold an Air Carrier Operating Permit or a master lease with the LAWA and is therefore deemed as an
19 "Airport Employer." Defendants have violated and continue to violate California's labor laws with
20 respect to paying Plaintiff and Aggrieved Employees in accordance with the Living Wage Ordinance,
21 failing to pay for all hours worked, failing to reimburse for necessary business expenditures, and
22 failing to provide rest breaks.

23 ***Violations of the Living Wage Ordinance***

24 20. The LWO required certain City contractors, like Defendants, to pay employees a living
25 wage, adjusted each year to correspond to the changes reflected in the Consumer Price Index. As of
26 July 1, 2012, the LWO required covered employees to be paid a wage rate of \$10.70 per hour with
27 health benefits or \$15.37 per hour without health benefits. More recently, as of July 1, 2019, the LWO
28 required covered employees to be paid a wage rate of \$15.25 per hour with health benefits or \$20.59

1 per hour without health benefits. Plaintiff elected not to receive health benefits from Calop but his
2 wage statements reveal that he was not being compensated at the applicable hourly rate required by
3 the LWO. Instead, he was paid the hourly rate of \$16.90. Plaintiff has been compensated at this rate
4 since January 1, 2020. In other words, Defendants compensated Plaintiff and other similarly situated
5 Aggrieved Employees by paying lower wages than those required by the LWO. This is unlawful.

6 21. Plaintiff is also a covered employee for purposes of seeking the protections afforded
7 by the LWO. The Bureau of Contract Administration (“Bureau”) is responsible for the administration
8 and enforcement of the LWO. The Bureau evaluated various airport job classifications to determine
9 whether such jobs are covered by the LWO. On February 26, 2010, the Bureau specifically identified
10 employees in “Security” among others, as industry-specific “Airport employees” entitled to LWO
11 protection. Despite all this, Defendants continue to refuse to pay employees the wages required and
12 explicitly referenced by the LWO.

13 ***Failure to Pay For All Hours Worked***

14 22. Aggrieved Employees, including Plaintiff, are also subjected to an illegal rounding
15 policy that systemically results in the underpayment of wages. Defendants utilize a timekeeping
16 system, which failed to compensate Plaintiff and other aggrieved non-exempt, hourly employees for
17 all hours worked, whether by rounding, time-shaving, or otherwise. By way of example, Mr.
18 Fernandez would clock in at 5:00 a.m. to start his shift, but was able to observe or understand that the
19 Company would register his clock-in time for pay purposes as 5:05 a.m. This unlawful practice, policy,
20 and/or procedure is consistently applied to other aggrieved, non-exempt hourly employees like
21 Plaintiff who in turn are not compensated for all hours worked. Defendants’ policy or practice of
22 rounding employee time punches is neither fair nor neutral on its face or as applied as required by
23 California law.

24 23. California law requires that an employer compensate an employee for all hours worked.
25 See Industrial Welfare Commission Wage Order 4-2001, § 2(G) (“‘Hours worked’ means the time
26 during which an employee is subject to the control of an employer, and includes all the time the
27 employee is suffered or permitted to work, whether or not required to do so.”) Labor Code § 204;
28 *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 584-586 (2000). Such a practice or mechanism that

1 is used in lieu of real-time recording, does not accurately account for all hours worked. *See Morillion*,
2 22 Cal.4th at 586; *See also Troester v. Starbucks Corp.*, 421 P.3d 1114 (2018) (recent California
3 Supreme Court decision affirming that relevant statutes and wage order do not allow employers to
4 require employees to routinely work for minutes off-the-clock without compensation.) For those
5 Aggrieved Employees who were otherwise working an eight-hour shift or forty-hour workweek, this
6 illegal policy or procedure likewise resulted in unpaid overtime.

7 24. California and federal law “permits employers to use a rounding policy for recording
8 and compensating employee time as long as the employer’s rounding policy does not “consistently
9 result[] in a failure to pay employees for time worked.” *See’s Candy Shops, Inc. v. Superior Court*,
10 210 Cal. App. 4th 889, 901 (2012) (quoting *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1126 (C.D.
11 Cal. 2011) (quoting 29 C.F.R. 785.48(b)). In other words, an employer may use a rounding policy if
12 it is “fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of
13 time, in failure to compensate the employees properly for all the time they have actually worked.’” *Id.*
14 at 907 (quoting 29 C.F.R. § 785.48(b)(2012); D.L.S.E. Manual §§ 47.1, 47.2. (2002 rev.)).

15 25. IWC Wage Order, number 4 defines “hours worked” to mean “the time during which
16 an employee is subject to the control of an employer, and includes all the time the employee is suffered
17 or permitted to work, whether or not required to do so.”

18 26. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly
19 provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars
20 (\$8.00) per hour.

21 27. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that
22 on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9)
23 per hour, that on and after January 1, 2016, the minimum wage for all industries shall be not less than
24 ten dollars (\$10) per hour, that on and after January 1, 2017, the minimum wage for all industries shall
25 be not less than ten dollars and fifty cents (\$10.50) per hour, and that on and after January 1, 2018, the
26 minimum wage for all industries shall be not less than eleven dollars (\$11) per hour,

27 28. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any agreement
28 to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
2 interest thereon, reasonable attorney's fees, and costs of suit."

3 29. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section
4 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
5 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
6 in an amount equal to the wages unlawfully unpaid and interest thereon."

7 30. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful."

10 31. Defendants' non-exempt employees, including Plaintiff and other aggrieved, non-
11 exempt hourly employees, are paid on an hourly-basis for their time spent working. Hours worked
12 include, but are not limited to, all hours that an employee is permitted or suffered to work including,
13 but not limited to, off-the-clock work that an employer either knew or should have known that an
14 employee was performing.

15 32. As a matter of policy and/or practice, Defendants routinely suffered or permitted their
16 non-exempt employees, including Plaintiff and other Aggrieved Employees, to work portions of the
17 day during which they were subject to Defendants' control, but Defendants failed to compensate them.

18 33. Throughout the Relevant Time Period, Defendants routinely required their non-exempt
19 employees, including Plaintiff and other Aggrieved Employees, to record their scheduled hours of
20 work on Defendants' designated timekeeping system. Consequently, the policy, procedure, and/or
21 practice utilized by Defendants to compensate Plaintiff and Aggrieved Employees did not accurately
22 reflect the actual start and stop times of Plaintiff's and Aggrieved Employees' hours of work.

23 34. Accordingly, throughout the Relevant Time Period, Plaintiff was subjected to
24 Defendants' uniform policy and/or practice of failing to pay at least minimum wages and/or designated
25 rates for all hours worked. As a result, Plaintiff was routinely denied compensation for all hours
26 worked as their shifts would stretch beyond the times encompassed in the timesheets that they were
27 required to sign.

28 ///

1 35. Additionally, Defendants did not maintain adequate records of all wages earned, hours
2 worked, and meal and rest breaks taken.

3 36. Labor Code Section 1194 provides that an employee receiving less than the legal
4 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
5 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
6 and costs of suit.

7 37. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
8 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
9 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
10 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
11 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
12 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
13 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
14 the regular rate of pay of an employee."

15 38. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
16 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
17 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
18 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
19 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
20 seventh (7th) day of work in any one workweek.

21 39. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
22 and thus failed to pay overtime wages for the actual amount of overtime hours worked.

23 ***Defendants' Failure to Provide Rest Breaks***

24 40. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
25 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each
26 four (4) hours of work, during which employees are relieved of all duty.

27 41. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
28 number 4, section 12 required employers to pay one hour of additional pay at the regular rate of

1 compensation for each employee and each workday that a proper rest period is not provided.

2 42. Plaintiff is informed and believes and based thereon alleges that Defendants failed to
3 effectively communicate California rest period requirements to their non-exempt employees, including
4 Plaintiff and other Aggrieved Employees. Plaintiff is further informed and believes and based thereon
5 alleges that throughout the Relevant Time Period, Defendants failed to schedule rest periods.

6 43. Throughout the Relevant Time Period, Plaintiff and the other Aggrieved Employees
7 were routinely denied the rest breaks they were entitled to under California law.

8 44. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 9 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the
10 other Aggrieved Employees were relieved of all duty for each four (4) hours of work;
11 b. Failed to compensate Plaintiff and the other Aggrieved Employees for break time when
12 breaks were taken; and
13 c. Failed to pay Plaintiff and the other Aggrieved Employees one (1) hour of pay at their
14 regular rate of compensation for each workday that a rest period was not permitted.

15 ***Failure to Reimburse For Necessary Business Expenditures***

16 45. Aggrieved Employees, including Plaintiff, also use their personal cellphones in
17 connection with their work. Defendants heavily rely on Aggrieved Employees' personal cell phones
18 to carry out their day-to-day job duties for Defendants. First, Calop instructs Aggrieved Employees,
19 including Plaintiff, to download the ADP Ez application on the personal cell phone in order to record
20 their time for payroll purposes. Second, Defendants also directly call Aggrieved Employees, including
21 Plaintiff, for work-related inquiries throughout the workday. Third, Aggrieved Employees, including
22 Plaintiff, also utilize their own personal cell phones to carry out assignments for Defendants. This
23 occurs when Defendants contract to provide services for another airline and Plaintiff and other
24 Aggrieved Employees coordinate with those airline clients using their own personal cell phones to
25 perform the contracted work.

26 46. California Labor Code Section 2802 requires employers to always reimburse
27 employees who are required to use personal cell phones for work-related calls for a reasonable
28 percentage of their cell phone bills. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th

1 1137, 1140. Here, Calop uniformly contributes nothing towards Aggrieved Employees' personal cell
2 phones to carry out their day-to-day job duties. Providing nothing is clearly no full measure – much
3 less a percentage of the monthly cell phone bill - for this necessary, mandatory business expenditure
4 incurred by Aggrieved Employees, including Plaintiff.

5 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

6 47. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
7 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
8 Code Sections 202 requires an employer to pay an employee who quits any compensation due and
9 owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code
10 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
11 or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time
12 penalties in the form of continued compensation for up to thirty (30) work days.

13 48. Defendants willfully and knowingly failed to pay Plaintiff and the other Aggrieved
14 Employees, upon termination of employment, all accrued compensation including payment of
15 minimum wage compensation, missed meal and rest periods compensation and for time spent
16 performing work off the clock at Defendants' direction.

17 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

18 49. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4,
19 section 7 required employers to maintain adequate employment records and provide employees with
20 accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly
21 rates worked during each pay period, the corresponding number of hours worked at each hourly rate,
22 and meal breaks taken.

23 50. Wage statements provided to Plaintiff and the other Aggrieved Employees by
24 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the
25 Labor Code section 226, and IWC Wage Order number 4, section 7.

26 51. Moreover, Defendants did not maintain adequate records of all wages earned, hours
27 worked and breaks taken.

28 ////

1 ***Exhaustion of Administrative Remedies***

2 52. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code Section 2699.3. By letter dated March 17, 2020, Plaintiff, on behalf of himself and the
4 other Aggrieved Employees, gave written notice by electronic mail and certified mail to the Labor and
5 Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
6 California Labor Code alleged to have been violated, including the facts and theories to support the
7 alleged violations. Attached as Exhibit “1” is a true and correct copy of the referenced letter.

8 53. More than sixty-five (65) calendar days have passed since Plaintiff provided the
9 LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified
10 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
11 herein.

12 **FIRST CAUSE OF ACTION**

13 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

14 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

15 54. Plaintiff incorporates by reference the allegations set forth above.

16 55. As set forth above, Plaintiff have complied with the procedures for bringing suit
17 specified in California Labor Code Section 2699.3. By letter dated March 17, 2020, Plaintiff, on
18 behalf of himself and the other Aggrieved Employees, gave written notice by certified mail to the
19 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been
20 violated, including the facts and theories to support the alleged violations. More than sixty-five (65)
21 calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff
22 has not received any written notice nor been notified from the LWDA that it does intend to investigate
23 the violations of the California Labor Code alleged herein.

24 56. This action arises out of the allegedly unlawful labor practices of Defendants in
25 California. Through this private attorneys’ general action, Plaintiff represents himself, and other
26 Aggrieved Employees of Defendants that were in California, against whom Defendants have allegedly
27 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
28 herein, Plaintiff now seeks to recover civil penalties, attorneys’ fees, and costs, pursuant to the Labor

1 Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

2 57. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
3 under conditions that violate the applicable Wage Order.

4 58. Plaintiff is informed and believes that throughout the Relevant Time Period,
5 Defendants have applied centrally devised policies and practices to Plaintiff and the other Aggrieved
6 Employees with respect to wages, hours, and working conditions.

7 **Failure to Pay Minimum Wages and Designated Rates**

8 59. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
9 that the minimum wage for employees fixed by the IWC and the LWO is the minimum wage to be
10 paid to employees and the payment of a wage less than the minimum so fixed is unlawful.
11 Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under
12 conditions that violate the applicable Wage Order.

13 60. Where any statute or contract requires an employer to maintain the designated wage
14 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
15 purporting to pay the wage designated by statute or by contract.

16 61. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
17 and the other Aggrieved Employees to remain under Defendants' control without paying therefore,
18 which resulted in them earning less than the legal minimum wage in the State of California for all
19 hours worked. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff
20 and the other Aggrieved Employees to remain under Defendants' control without paying therefor,
21 which resulted in them earning less than the legal minimum wage in the State of California for all
22 hours worked.

23 62. Defendants' failure to pay Plaintiff and other Aggrieved Employees minimum wages
24 and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and
25 other Aggrieved Employees are entitled to recover civil penalties pursuant to sections 1197.1 and
26 2699(a), (f), and (g).

27 **Failure to Pay Overtime Compensation**

28 63. Labor Code Section 1194 provides that an employee receiving less than the legal

1 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
2 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
3 and costs of suit.

4 64. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
5 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
6 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
7 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
8 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
9 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
10 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
11 the regular rate of pay of an employee."

12 65. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
13 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
14 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
15 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
16 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
17 seventh (7th) day of work in any one workweek.

18 66. Plaintiff and the other Aggrieved Employees were classified as non-exempt by
19 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the
20 hours and time specified in the Wage Order, statutes and regulations identified herein.

21 67. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff
22 and other Aggrieved Employees, and thus failed to pay overtime wages for the actual amount of
23 overtime hours worked.

24 68. Additionally, Defendants improperly calculated the amount of overtime wages owing
25 as Defendants did not take into account the actual hours that they worked, and thus failed to pay
26 Plaintiff and other Aggrieved Employees all overtime wages due.

27 **Failure to Provide Rest Breaks**

28 69. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit

1 and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net
2 rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of
3 each work period insofar as is practicable.

4 70. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
5 requiring employees to work during required rest periods and require employers to pay non-exempt
6 employees an additional hour of premium wages on each workday that the employee is not provided
7 with the required rest period.

8 71. At relevant times during the applicable limitations period, Defendants failed to provide
9 Plaintiff with a net rest periods of at least ten (10) minutes for each four (4) hour work period, or major
10 portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit
11 Plaintiff to take all legally required rest breaks.

12 72. Plaintiff are informed, believes and thereon allege that, at relevant times during the
13 applicable limitations period, Defendants maintained a policy or practice of not providing the other
14 Aggrieved Employees with net rest periods of a least ten (10) minutes for each four (4) hour work
15 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules
16 that do not permit them to take all legally required rest breaks.

17 **Failure to Pay Wages Upon Termination**

18 73. Labor Code Section 201 provides that all earned and unpaid wages of an employee who
19 is discharged are due and payable immediately at the time of discharge.

20 74. Labor Code Section 202 provides that all earned and unpaid wages of an employee who
21 quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting
22 and that all earned and unpaid wages of an employee who quits without providing at least 72-hours'
23 notice before quitting are due and payable within 72 hours.

24 75. Labor Code Section 203 provides that the wages of an employee continue on a daily
25 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid
26 wages to the employee in accordance with Labor Code Section 201 or Section 202.

27 76. Plaintiff are informed and believes that Defendants' failures to timely pay Plaintiff and
28 the Aggrieved Employees all of their earned and unpaid wages, including unpaid minimum wage and

1 overtime, and unprovided rest and meal period premium wages, have been willful in that, at all relevant
2 times, Defendants have deliberately maintained policies and practices that violate the requirements of
3 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to
4 comply with those legal requirements.

5 **Failure to Provide and Maintain Compliant Wage Statements**

6 77. Labor Code Section 1174 requires that every person employing labor in this state shall
7 keep (1) a record showing the names and addresses of all employees employed and the ages of all
8 minors; (2) at a central location in the state or at the plants or establishments at which employees are
9 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
10 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
11 respective plants or establishments; (3) such records in accordance with rules established for this
12 purpose by the commission, but in any case, on file for not less than three years. This statute also
13 prevents an employer from prohibiting an employee from maintaining a personal record of hours
14 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
15 keep the records required by Section 1174.

16 78. Pursuant to California Labor Code Section 226(a), Plaintiff and the other Aggrieved
17 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
18 itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly
19 rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly
20 rate by the employee.

21 79. Defendants failed to provide Plaintiff with accurate itemized statements in accordance
22 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
23 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
24 the unlawful labor and payroll practices described herein.

25 80. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
26 the applicable limitations period, Defendants maintained a policy or practice of not providing
27 Aggrieved Employees with accurate itemized wage statements by providing them with wage
28 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and

1 deductions from wages earned as a result of the unlawful labor and payroll practices described herein.

2 81. Plaintiff are informed and believes and thereon alleges that Defendants' failure to
3 provide then and the Aggrieved Employees with accurate written wage statements is knowing and
4 intentional.

5 82. Plaintiff are informed and believes and thereon alleges that Defendants had the ability
6 to provide them and the Aggrieved Employees with accurate wage statements, but intentionally
7 provided wage statements that they knew are not accurate.

8 83. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff
9 and the Aggrieved Employees have suffered an injury. Their legal rights to receive accurate wage
10 statements were violated and they were misled about the amount of wages they had actually earned
11 and were owed. In addition, the absence of accurate information on their wage statements prevented
12 immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical
13 computations to determine the amounts of wages owed, has caused difficulty and expense in
14 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
15 information about wages and amounts deducted from wages to state and federal government agencies.

16 84. California Labor Code sections 2699(a) and (g) authorize an Aggrieved Employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover civil
18 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

19 **Failure to Reimburse For Necessary Business Expenditures**

20 85. Labor Code § 2802(a), an employer shall indemnify its employees for all necessary
21 expenditures or losses incurred by the employees in direct consequence of the discharge of their duties,
22 or of their obedience to the directions of the employer, even though unlawful, unless the employee, at
23 the time of obeying the directions, believed them to be unlawful.

24 86. During the Relevant Time Period, Plaintiff and the Aggrieved Employees incurred
25 necessary business-related expenses and costs that were not fully reimbursed by Defendants, including
26 and without limitations, personal cell phone usage to carry out the day-to-day duties for the benefit of
27 Defendants and its members.
28

87. During Relevant Time Period, Defendants failed to reimburse Aggrieved Employees, including Plaintiff, for necessary business-related expenses and costs.

88. Aggrieved Employees, including Plaintiff, are entitled to recover civil penalties from Defendants for their unreimbursed business-related expenses and costs incurred during the course and scope of their employment.

Section 558 Penalties

89. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

90. The PAGA states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees...

91. One provision of law enforceable through PAGA as to civil penalties, though not unpaid wages, is Labor Code § 558, which states the following:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages...

Penalties Authorized by PAGA

92. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other Aggrieved Employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2802, and 2698 *et seq.*, during the applicable limitations period in the following amounts:

////

- 1 a. For violations of California Labor Code sections 200, 201, 202, 203, 226.7, 1198, and
2 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
3 each initial violation and two hundred dollars (\$200.00) for each Aggrieved
4 Employee per pay period for each subsequent violation (penalty amounts established
5 by California Labor Code Section 2699(f)(2));
- 6 b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars
7 (\$100.00) for each Aggrieved Employee per pay period for each initial violation
8 and two hundred dollars and fifty (\$250.00) for each Aggrieved Employee per pay
9 period for each subsequent violation regardless of whether the initial violation is
10 intentionally committed (penalty amounts established by California Labor Code §
11 1197.1);
- 12 c. For violations of California Labor Code Sections 216, 221, 223 one hundred
13 dollars (\$100.00) for each Aggrieved Employee for each initial violation and two
14 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent or
15 willful violation (penalty amounts established by California Labor Code § 225.5);
- 16 d. For violations of California Labor Code Section 1174, five hundred dollars
17 (\$500.00) for each of Defendants' violations in addition to any other penalties or
18 fines permitted by law (penalty amounts established by California Labor Code §
19 1174.5);
- 20 e. For violations of California Labor Code Section 226, two hundred fifty dollars
21 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
22 employee for each subsequent violation (penalty amounts established by California
23 Labor Code Section 226.3);
- 24 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
25 per employee for initial violation and two hundred dollars (\$200.00) per employee
26 for each subsequent violation, plus 25 percent of the amount unlawfully withheld
27 (penalty amounts established by California Labor Code Section 210);

28 ///

1 g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage
2 Order 4-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each Aggrieved
3 Employee for each initial violation for pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover unpaid wages and one
5 hundred dollars (\$100.00) for each underpaid employee for each pay period for
6 which the employee was underpaid in addition to an amount sufficient to recover
7 unpaid wages (penalty amounts established by California Labor Code Section
8 558).

9 h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for
10 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
11 period for which the employee was underpaid; for each subsequent violation, one
12 hundred dollars (\$100.00) for each underpaid employee for each pay period for
13 which the employee was underpaid (penalty amounts established by California
14 Labor Code Section 558).

15 93. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and
16 the other Aggrieved Employees, are entitled to an award of reasonable attorneys' fees and costs.

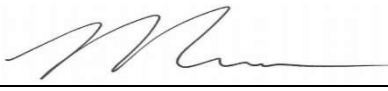
17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff on behalf of himself and on behalf of the Aggrieved Employees,
19 prays for judgment against Defendants as follows:

- 20 a. Civil penalties;
- 21 b. Other penalties and fines permitted by law;
- 22 c. Costs of suit;
- 23 d. Reasonable attorneys' fees;
- 24 e. Pre-judgment and post-judgment interest as provided by law; and
- 25 f. Such other and further relief as the Court deems just and proper.
- 26
- 27
- 28

1 DATED: June 9, 2020

BOYAMIAN LAW, INC.

2 By: 

3 Michael H. Boyamian
4 Attorneys for Plaintiff ANTUAN
5 FERNANDEZ, Other Aggrieved
6 Employees, and the General Public
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203. My electronic service address is demiah@boyamianlaw.com

On August 31, 2021, I served, in the manner indicated below, the foregoing document described as:

**COMPLAINT FOR CIVIL PENALTIES UNDER LABOR CODE PRIVATE
ATTORNEY'S GENERAL ACT OF 2004, LABOR CODE 2698, ET. ESQ**

For the following case: **Fernandez v. Calop Business Systems, Inc.**
LWDA/Court Case No.: **LWDA-CM-779041-20**
 20STCV21789
 Los Angeles County Superior Court

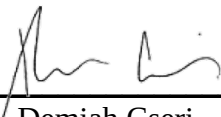
on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MC-55
Sacramento, California 95814

 X BY ELECTRONIC SERVICE: Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

 X STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 31, 2021 in Glendale, California.



Demiah Cseri