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**RECEIVED**  
LOS ANGELES SUPERIOR COURT

**DEC 31 2020**

**S. DREW**

**FILED**  
Superior Court of California  
County of Los Angeles

**DEC 31 2020**

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY ESMERALDA MUÑOZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF LOS ANGELES**

12 ROBERT MARSHALL, on behalf of  
13 himself and others similarly situated and  
14 aggrieved,

15 Plaintiff,

16 vs.

17  
18 OS4LABOR LLC, a California limited  
19 liability company; CUSTOM GOODS, LLC,  
20 a California limited liability company; and  
21 DOES 1 to 100, inclusive,

22 Defendants.

Case No.: 20STCV48263

**FIRST AMENDED CLASS ACTION AND  
REPRESENTATIVE COMPLAINT**

**JURY TRIAL DEMANDED**

**FILED**

1 Plaintiff ROBERT MARSHALL, an individual on behalf of himself and all other employees  
2 similarly situated and aggrieved, hereby files this Complaint against Defendants OS4LABOR LLC,  
3 CUSTOM GOODS, LLC and DOES 1 to 100, inclusive (collectively referred to herein as  
4 “Defendants”). Plaintiff is informed and believes, and on the basis of that information and belief,  
5 allege as follows:

6 **JURISDICTION AND VENUE**

7 1. Jurisdiction is proper in this court by virtue of the California statutes, decisional  
8 law, and regulations, and the local rules under the Los Angeles Superior Court Rules.

9 2. Venue in this Court is proper in that Defendants, and each of them, have a principal  
10 business address located in the County of Los Angeles, State of California.

11 **THE PARTIES**

12 3. Plaintiff ROBERT MARSHALL is, and at relevant times was, an individual domiciled  
13 in the State of California and a citizen of the State of California who worked as a non-exempt Class  
14 A truck driver for Defendants in the State of California.

15 4. Defendant OS4LABOR LLC (“OS4LABOR”) is a California limited  
16 liability company that, at all relevant times, was authorized to do business within the State of  
17 California and is doing business in the State of California.

18 5. Defendant CUSTOM GOODS, LLC (“CUSTOM GOODS”) is a California  
19 limited liability company that, at all relevant times, was authorized to do business within the State  
20 of California and is doing business in the State of California..

21 6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through  
22 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by said  
23 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the  
24 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect  
25 the true names and capacities of the Doe Defendants when such identities become known.

26 7. Plaintiff is further informed and believes that, at all relevant times, each Defendant was  
27 the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder,  
28 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some

1 or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint  
2 enterprise for profit, and bore such other relationships to some or all of the other Defendants so as  
3 to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further  
4 informed and believes and thereon alleges that each Defendant acted pursuant to and within the  
5 scope of the relationships alleged above, and that at all relevant times, each Defendant knew or  
6 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the  
7 conduct of all other Defendants.

8         8. At all relevant times, Defendants were and are legally responsible for all of the unlawful  
9 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are  
10 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of  
11 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant times  
12 undertaken as employees of Defendants, acting within the scope of their employment or authority  
13 in all of the unlawful activities described herein.

#### 14                                   **JOINT LIABILITY**

15         9. Under California law, the definition of the terms "to employ" are broadly construed  
16 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to  
17 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)  
18 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49  
19 Cal.4th 35, 64 (2010). On reason that the IWC defined "employer" in terms of exercising control  
20 was to reach situations in which multiple entities control different aspects of the employment  
21 relationship. Supervision of the work, in the specific sense of exercising control over how services  
22 are properly performed, is properly viewed as one of the "working conditions" mentioned in the  
23 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary  
24 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

25         10. During Plaintiff's assignment with Defendants CUSTOM GOODS and OS4LABOR,  
26 Plaintiff and the Class Members were jointly employed by these Defendants for purposes of the  
27 Wage Orders, under the alternative definitions of "to employ" adopted by the California Supreme  
28 Court in *Martinez*, supra. As discussed below, both of these Defendants (1) exercised control over

1 wages, hours and working conditions of Plaintiff and the Class Members; (2) suffered or permitted  
2 Plaintiff and the Class Members to work for them; and, (3) engaged Plaintiff and the Class Members  
3 to work for them.

4 11. In particular, Defendant OS4LABOR hired Plaintiff and entered into a written  
5 employment agreement with him. During his employment, OS4LABOR maintained control over  
6 many aspects of Plaintiff's employment, including, among other things, having the authority to  
7 discipline him, change his job assignment, change his work hours, change his rates of pay, and to  
8 terminate his employment.

9 12. In addition, when he was first hired, Defendant OS4LABOR provided Plaintiff with  
10 orientation and training materials. Defendant OS4LABOR issued Plaintiff written policies  
11 concerning his meal periods, rest breaks, timekeeping, hours worked, and payment of his wages,  
12 with which Plaintiff was required to comply. Among other things, these policies provided that  
13 Plaintiff's weekly time cards be submitted to Defendant OS4LABOR, and, Defendant OS4LABOR  
14 was supposed to process his time cards and pay him for all hours he worked. Defendant OS4LABOR  
15 exercised ultimate control over the payment of Plaintiff's wages, as Defendant OS4LABOR issued  
16 Plaintiff his paychecks. Finally, Defendant OS4LABOR directed Plaintiff to comply with all of  
17 Defendant CUSTOM GOODS' policies and directions when he was assigned to work at CUSTOM  
18 GOODS. Plaintiff is informed and believes that Defendant OS4LABOR exercised the same control  
19 over, applied the same policies and practices, and engaged in the same acts and omissions with  
20 regard to the other Class Members.

21 13. Defendant CUSTOM GOODS similarly suffered or permitted Plaintiff to work for  
22 CUSTOM GOODS or engaged Plaintiff to work for CUSTOM GOODS. Plaintiff is informed and  
23 believes that Defendant CUSTOM GOODS entered into a written agreement with Defendant  
24 OS4LABOR, pursuant to which Defendant CUSTOM GOODS paid Defendant OS4LABOR to  
25 provide it with workers, including Plaintiff, to conduct Defendants CUSTOM GOODS business  
26 operation. Defendant CUSTOM GOODS suffered or permitted Plaintiff to work at CUSTOM  
27 GOODS for the entirety of his tenure.

28 14. During his assignment, Defendant CUSTOM GOODS further exercised control over

1 Plaintiff's wages, hours and working conditions. Among other things, Defendant CUSTOM  
2 GOODS: (1) set Plaintiff's work hours and provided him with his work schedule; (2) provided  
3 Plaintiff with written policies regarding his meal periods and rest breaks, with which Plaintiff was  
4 required to comply; (3) directly supervised Plaintiff's work through its employees; (4) assigned  
5 Plaintiff his job duties and trained him on his job duties; (5) reprimanded and counseled Plaintiff  
6 regarding his work performance and other issues; (6) exercised authority to end Plaintiff's work  
7 assignment at any time, which essentially equated to a termination of employment as OS4LABOR  
8 did not guarantee other job assignments; (7) required Plaintiff to use its timekeeping system for  
9 purposes of recording his time; (8) determined if and when Plaintiff would receive meal periods and  
10 rest breaks; (9) subjected Plaintiff to unlawful schedules for taking meal periods and rest breaks;  
11 (10) was responsible for recording when Plaintiff began and ended his shifts. Defendant CUSTOM  
12 GOODS issued further written policies and practices and guidelines governing Plaintiff's working  
13 conditions with which he was required to comply. Plaintiff is informed and believes that Defendant  
14 CUSTOM GOODS exercised the same control over, applied the same policies and practices, and  
15 engaged in the same acts and omissions with regard to the other Class Members.

16 **DEFENDANT CUSTOM GOODS' LIABILITY UNDER CALIFORNIA LABOR CODE**

17 **SECTION 2810.3**

18 15. California Labor Code section 2810.3(b)(1) provides that "a client employer shall share  
19 with the labor contractor all civil legal responsibility and civil liability for all workers supplied by  
20 that labor contractor for . . . the payment of wages." A "labor contractor" means "an individual or  
21 entity that supplies, either with or without a contract, a client employer with workers to perform  
22 labor within the client employer's usual course of business." Cal. Labor Code § 2810.3(a)(3). A  
23 "client employer" is "a business entity, regardless of its form, that obtains or is provided workers to  
24 perform labor within its usual course of business from a labor contractor." Cal. Labor Code §  
25 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than  
26 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors  
27 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). "Usual course of business"  
28

1 means “the regular and customary work of a business, performed within or upon the premises or  
2 worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

3 16. Defendant OS4LABOR is a “labor contractor” in that it supplies client employer,  
4 Defendant CUSTOM GOODS, with workers to perform labor within Defendant CUSTOM  
5 GOODS’ usual course of business, namely the importing and exporting of goods.

6 17. Defendant CUSTOM GOODS is a “client employer” as it obtains or is provided  
7 workers to perform labor within its usual course of business from labor contractors, including  
8 Defendant OS4LABOR. Defendant CUSTOM GOODS has a workforce of more than twenty  
9 workers and each is supplied with at least five workers from a labor contract at any given time.

10 18. Under California Labor Code Section 2810.3, Defendant CUSTOM GOODS, client  
11 employer, share with the labor contractor, Defendant OS4LABOR, all civil legal responsibility and  
12 civil liability for all workers supplied by that labor contractor for the payment of wages.

13 19. Plaintiff complied with Labor Code Section 2810.3 by mailing certified a letter outlining  
14 the substance of the allegations alleged herein to the “Client Employer,” namely Defendant  
15 CUSTOM GOODS , thirty (30) days before filing suit.

### 16 **CLASS ALLEGATIONS**

17 20. Plaintiff brings this action as a class action under Code of Civil Procedure section 382  
18 on behalf of himself and all others similarly situated. The class Plaintiff seeks to represent is defined  
19 as follows: “All hourly paid, non-exempt workers who were directly employed by CUSTOM  
20 GOODS in California at any time within the four years prior to the filing of the initial complaint; in  
21 addition, all hourly paid, non-exempt employees, staffed/assigned by Defendant OS4LABOR to  
22 work at CUSTOM GOODS, in California at any time within the four years prior to the filing of the  
23 initial complaint.”

24 a. Numerosity: While the exact number of Class Members is unknown to Plaintiff  
25 at this time, the class is so numerous that the individual joinder of all members is  
26 impractical under the circumstances of this case.

27 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment  
28 because common questions of law and fact predominate over individual issues.

1 Common questions include, but are not limited to, the following: (1) whether  
2 Defendants provided Plaintiff and the Class Members with all meal periods or  
3 premium payments in lieu thereof in compliance with California law; (2) whether  
4 Defendants provided Plaintiff and the Class Members with all rest periods, or  
5 premium payments in lieu thereof, in compliance with California law; (3) whether  
6 Defendants failed to pay Plaintiff and the Class Members all owed minimum  
7 wages in compliance with California law; (4) whether Defendants failed to pay  
8 Plaintiff and the Class Members all sick leave time benefits in compliance with  
9 California law (5) whether Defendants failed to pay Plaintiff and the Class  
10 Members all owed overtime wages in compliance with California law; (6)  
11 whether Defendants provided Plaintiff and the Class Members with accurate,  
12 itemized wage statements in compliance with California law; (7) whether  
13 Defendants timely paid Plaintiff and the Class Members all wages due during  
14 their employment and upon separation of employment; (8) whether Defendants  
15 maintained accurate records of all hours worked and all owed meal periods; and  
16 (9) whether Defendants violated California Business and Professions Code  
17 sections 17200, et seq.

- 18 c. Ascertainable Class. The proposed class is ascertainable as its members can be  
19 identified and located using information in Defendants' business, payroll and  
20 personnel records.
- 21 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all  
22 members is impractical under the circumstances of this case. While the exact  
23 number of Class Members is unknown to Plaintiff, Plaintiff is informed and  
24 believes the class consists of at least 100 individuals.
- 25 e. Typicality. Plaintiff's claims are typical of the claims of the Class Members.  
26 Plaintiff suffered a similar injury as the other Class Members as a result of  
27 Defendants' common practices regarding, inter alia, failure to provide proper  
28 meal and rest periods or premium compensation in lieu thereof, failure to provide

1 all owed minimum and overtime wages, failure to provide accurate wage  
2 statements, and failure to pay all wages due upon termination. In addition,  
3 Plaintiff will fairly and adequately protect the interests of the Class Members.  
4 Plaintiff has no interests adverse to the interests of the other Class Members.

5 f. Superiority. A class action is superior to other available means for the fair and  
6 efficient adjudication of this controversy since individual joinder of all members  
7 of the class is impractical. Class action treatment will permit a large number of  
8 similarly situated persons to prosecute their common claims in a single forum  
9 simultaneously, efficiently, and without the unnecessary duplication of effort and  
10 expense that numerous individual actions would engender. Furthermore, as the  
11 damages suffered by each individual member of the class may be relatively small,  
12 the expenses and burden of individual litigation would make it difficult or  
13 impossible for individual members of the class to redress the wrongs done to  
14 them, while an important public interest will be served by addressing the matter  
15 as a class action. The cost to the court system of adjudication of such  
16 individualized litigation would be substantial. Individualized litigation would  
17 also present the potential for inconsistent or contradictory judgments. Finally,  
18 the alternative of filing a claim with the California Labor Commissioner is not  
19 superior, given the lack of discovery in such proceedings, the fact that there are  
20 fewer available remedies, and the losing party has the right to a trial de novo in  
21 the Superior Court.

## 22 FACTUAL ALLEGATIONS

23 21. During the four-year period preceding filing of this complaint, Plaintiff and each of the  
24 Class Members were jointly employed by Defendants in the State of California as non-exempt,  
25 hourly paid workers. Defendants at all times exercised control over Plaintiff and each of the Class  
26 Members, and suffered and/or permitted them to work.

27 22. Plaintiff was hired by Defendant OS4LABOR in or about July 2019, and was  
28

1 immediately assigned to work for Defendant CUSTOM GOODS. He worked for CUSTOM  
2 GOODS as a Class A driver, moving storage containers among CUSTOM GOODS' three California  
3 warehouses that were in close proximity to each other. Plaintiff typically worked eight (8) hours  
4 per day, five (5) days per week, but would often work Saturdays, such that he would often work six  
5 (6) days per week.

6 23. Plaintiff was at times unable to take timely, thirty-minute uninterrupted meal periods  
7 often being forced to take late meal periods and/or work through his meal periods or said meal  
8 periods would be interrupted/cut short due to the nature and constraints of his job duties and  
9 commentary from supervisors instructing him to take non-compliant breaks or none at all. Plaintiff  
10 did not receive premium pay for these interrupted, cut short, missed and/or late meal periods and  
11 was required to clock-out for thirty minutes per shift even when he had to work through all or part  
12 his meal period. This off-the-clock work resulted in significant denied minimum and overtime  
13 wages.

14 24. Plaintiff was unable to take timely rest periods, and was required to work through  
15 and/or cut short his rest periods, due to the nature of the business and pressure from management  
16 not to take his due rest periods. Plaintiff did not receive premium pay for any of these missed, late  
17 or interrupted rest periods. Plaintiff was also not permitted to leave the premises during any  
18 purported rest periods, resulting in an on-duty rest period, and did not receive premium pay for any  
19 of these on-duty rest periods.

20 25. Additionally, Defendants failed to properly accrue and pay sick leave time benefits  
21 resulting in the underpayment of sick leave time benefits.

22 26. During his employment, Plaintiff failed to receive accurate wage statements in  
23 compliance with Labor Code section 226. Among other things, Plaintiff's paystubs did not  
24 accurately reflect, *inter-alia*, meal and rest break premiums for all denied meal and rest breaks and  
25 all owed minimum and overtime wages. Accordingly, Defendants have violated Labor Code section  
26 226.

27 27. Plaintiff's employment with Defendants ended on or about October 16, 2019, yet  
28

1 Defendants did not provide Plaintiff with his final pay check until the next regular pay date/next pay  
2 period such that Plaintiff's final payroll check was not timely provided to Plaintiff. Moreover,  
3 Plaintiff's final pay check, once provided, did not include all remuneration owed to him as it was  
4 devoid of all owed meal and rest period premiums and all owed minimum and overtime wages.

5 28. Plaintiff is informed and believes that Defendants OS4LABOR and CUSTOM GOODS  
6 engaged in these same herein described unlawful practices with regard to all of the Class Members,  
7 and that Defendants applied these same herein described unlawful practices to all of its employees  
8 that it applied to Plaintiff, regardless of whether the Class Members were assigned to work for  
9 Defendant CUSTOM GOODS by Defendant OS4LABOR, or any other temporary/staffing agency,  
10 or directly hired by CUSTOM GOODS.

11 **FIRST CAUSE OF ACTION**

12 **(Recovery of Unpaid Minimum Wages and Liquidated Damages -**  
13 **Labor Code §§ 510, 1194 and 1194.2)**

14 29. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15 30. California law provides employees in California must be paid for all hours worked, up  
16 to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As  
17 alleged herein, Plaintiff and the Class Members regularly worked hours for which they were not  
18 compensated by Defendants as required by California law. They were were required to perform off-  
19 the-clock work by virtue of what was essentially an automatic-deduction policy for meal periods, *to*  
20 *wit*: Plaintiff and the Class Members would be required to work through all or part of their meal  
21 periods while being required to clock out thirty minutes per shift for these non-compliant meal  
22 periods, resulting in significant off-the-clock work/unpaid work hours. Defendants owe Plaintiff  
23 and Class Members at least the minimum wage for this time worked, resulting in unpaid wages.

24 31. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members are  
25 entitled to recover all unpaid minimum time wages and liquidated damages thimeon, plus attorney's  
26 fees and costs, in an amount to be proved at trial.

1 **SECOND CAUSE OF ACTION**

2 **(Recovery of Unpaid Overtime – Labor Code §510)**

3 32. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

4 33. California law provides employees in California must be paid overtime, equal to 1.5  
5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day,  
6 and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt.  
7 As alleged herein, Plaintiff and the Class Members worked overtime hours for which they were not  
8 compensated by Defendants as required by California law. They were required to perform off-  
9 the-clock work, *to wit*: Plaintiff and the Class Members would be required to work through all or  
10 part of their meal periods while being required to clock out thirty minutes per shift for these non-  
11 compliant meal periods, resulting in significant off-the-clock work/unpaid work hours. Given  
12 Plaintiff and the Class Members' typical work schedules, this resulted in significant denied overtime  
13 wages to Plaintiff and the Class Members. Defendants owe Plaintiff and the Class Members  
14 overtime wages for this work and the addition of such hours would require payment at an overtime  
15 rate.

16 34. Plaintiff and the Class Members are entitled to recover all unpaid overtime wages, plus  
17 attorney's fees and costs, in an amount to be proved at trial.

18 **THIRD CAUSE OF ACTION**

19 **(Failure to Provide Meal Periods or Compensation in Lieu thereof --**

20 **Labor Code § 226.7)**

21 35. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

22 36. Under the Labor Code and IWC Wage Orders, Defendants were required to provide  
23 Plaintiff and the Class Members with one 30-minute meal break free from all duties for all shifts  
24 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than  
25 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an  
26 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the  
27 required meal period may be waived by mutual consent of the employer and employee, and (2) if  
28 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,

1 the required second meal period may be waived by mutual consent of the employer and employee,  
2 but only if the first meal period was not waived. Employers covered by the Wage Orders have an  
3 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours  
4 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal  
5 period, it is presumed no meal period was provided.

6 37. Plaintiff and Class Members regularly worked periods of more than five and ten hours  
7 in a workday without being provided proper mandatory thirty-minute, duty-free meal periods. Upon  
8 information and belief, Defendants failed to maintain a company meal period policy compliant with  
9 California law. Plaintiff and Class Members were regularly unable to take timely, thirty-minute  
10 uninterrupted first meal periods. They were unable to avail themselves of such breaks for various  
11 reasons, including, their workload and commentary from supervisors pressuring Plaintiff and the  
12 Class Members to take non-compliant breaks, or none at all. Defendants also failed to pay Plaintiff  
13 and Class Members an additional hour of wages at their regular rates of pay for each workday a  
14 meal period was not provided. Defendants required Plaintiff and Class Members to clock out for  
15 these non-compliant/missed meal periods, resulting in significant off-the-clock work, and thus,  
16 denied overtime wages, for Plaintiff and the Class Members.

17 38. Defendants failed to provide Plaintiff and the Class Members with all required meal  
18 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff  
19 and the Class Members are entitled to one additional hour's pay for each day a meal period was  
20 missed, late or interrupted, all in an amount to be proved at trial.

#### 21 **FOURTH CAUSE OF ACTION**

#### 22 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof --** 23 **Labor Code § 226.7)**

24 39. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 40. California law requires an employer to authorize or permit an employee to take a rest  
26 period of ten minutes for every four hours worked, or major fraction thereof, and such rest periods  
27 must be in the middle of the four-hour period insofar as practicable. If the employer fails to provide  
28 any required rest periods, or fails to provide a fully compliant rest break of 10 minutes within the

1 employee is fully relieved of all duties and all employer control, the employer must pay the  
2 employee one hour of pay at the employee's regular rate of compensation for each workday the  
3 employer did not provide a legally required and/or fully compliant rest period.

4 41. Defendants employed policies and procedures that ensured Plaintiff and other Class  
5 Members would not receive all legally required rest periods, as Defendants did not authorize nor  
6 permit all required rest periods in strict accordance to, and in compliance with, the timing  
7 requirements of all applicable Wage Orders. For example, Plaintiff reports he never took a rest  
8 break "and never heard of rest breaks," or words to that effect. Defendants failed to relieve Plaintiff  
9 and Class Members of all duties and all employer control for purposes of taking any rest breaks.  
10 Plaintiff and Class Members regularly worked enough hours to be entitled to at least two (2) rest  
11 breaks in a shift, which Defendants failed to allow for. Similar to meal breaks, Plaintiff and the  
12 Class Members were not able to avail themselves of their due rest breaks for various reasons,  
13 including, the pressures from their workloads and the lack of relief workers available, commentary  
14 from superiors instructing them to take shorter breaks than they were entitled to or no breaks at all.  
15 Per Defendant's illegal rest period policy/practice, Plaintiff and Class Members were not relieved  
16 of their duties nor permitted to leave the premises for purposes of taking any rest periods. Defendants  
17 further employed policies and procedures ensuring Plaintiff and Class Members did not receive  
18 premium wages to compensate them for workdays they did not receive all legally required and fully  
19 compliant rest periods.

20 42. Defendants failed to provide Plaintiff and the Class Members with all required rest  
21 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff  
22 and the Class Members are entitled to one additional hour's pay for each day a rest break was missed,  
23 late or interrupted, all in an amount to be proved at trial.

#### 24 **FIFTH CAUSE OF ACTION**

##### 25 **(Failure To Pay Sick Time Benefits – Labor Code §246)**

26 43. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

27 44. California Labor Code §246(1)(1) provides that paid sick time for non-exempt  
28

1 employees be “calculated in the same manner as the regular rate of pay for the workweek in which  
2 the employee uses paid sick time, whether or not the employee actually works overtime in the  
3 workweek.”

4 45. California Labor Code §246(1)(2) further provides that paid sick time for non-exempt  
5 employees be “calculated by dividing the employee’s total hours worked in the full pay periods of  
6 the prior 90 days of employment.

7 46. Defendant’s violated Labor Code §246 by failing to pay all owed sick leave time. Upon  
8 information and belief, Defendants failed to comply with California Sick Leave Laws as to Plaintiff  
9 and the Class Members.

#### 10 **SIXTH CAUSE OF ACTION**

##### 11 **(Failure to Provide Accurate Wage Statements – Labor Code § 226)**

12 47. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 48. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly  
14 or at the time of each payment of wages, shall furnish to his or him employee, either as a detachable  
15 part of the check, draft, or vouchim paying the employee’s wages, or separately if wages are paid  
16 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages  
17 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive  
18 dates of the period for which the employee is paid . . . , (8) the name and address of the legal entity  
19 that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and the  
20 corresponding number of hours worked at each hourly rate by the employee . . . .”

21 49. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a  
22 ]knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover  
23 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
24 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,  
25 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of  
26 costs and reasonable attorney’s fees.

27 50. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of  
28

1 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
2 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each  
3 violation in a subsequent citation, for which the employer fails to provide the employee a wage  
4 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

5 51. Defendants knowingly and intentionally failed to provide Plaintiff and other Class  
6 Members with proper, itemized wage statements as the wage statements provided by Defendants do  
7 not accurately reflect, *inter alia*, gross and net wages earned, and Defendants’ wage statements are  
8 devoid of amounts owed in meal and rest period premiums as well as all owed sick leave pay.  
9 Accordingly, Plaintiff and the Class Members are entitled to damages and penalties.

#### 10 **SEVENTH CAUSE OF ACTION**

##### 11 **(Failure to Timely Pay Wages During Employment and Upon Separation of Employment)**

12 52. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 53. Labor Code section 204 requires employers to pay all wages (other than those mentioned  
14 in Labor Code sections 201 , 201.3 , 202 , 204.1 , or 204.2) earned by any person in any employment  
15 twice during each calendar month, on days designated in advance by the employer as the regular  
16 paydays. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer  
17 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable  
18 immediately.”

19 54. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee  
20 not having a written contract for a definite period quits his or her employment, his or her wages  
21 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72  
22 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or  
23 her wages at the time of quitting.”

24 55. Defendants failed to pay Plaintiff and the Class Members all wages that were due and  
25 owing during their employment; and, failed to Plaintiff and the Class Members who are former  
26 employees all wages that were due and owing upon termination or resignation. Among other things,  
27 Plaintiff and the Class Members were not paid all owed minimum and overtime wages, all owed  
28 sick leave pay, nor all owed meal and rest break premiums. Defendants also systematically pays

1 final wages at the end of the final pay period rather than on the final day of work or the statutorily  
2 mandated time to pay final wages under California law. Plaintiff and the Class Members therefore  
3 seeks damages and penalties.

#### 4 **EIGHTH CAUSE OF ACTION**

##### 5 **(Failure to Maintain Accurate Records)**

6 56. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

7 57. California Labor Code sections 226 and 1174-75 require an employer to keep accurate  
8 records of all hour an employee works.

9 58. California Labor Code section 1174.5 provides that “[a]ny person employing labor who  
10 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and  
11 complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty  
12 of five hundred dollars (\$500).”

13 59. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep accurate  
14 records showing when an employee begins and ends each meal period.

15 60. Plaintiff is informed and believes that Defendants failed to maintain accurate records in  
16 compliance with these statutes. Among other things, Defendants failed to record the true hours  
17 worked and the true start and stop times of all meal periods owed to Plaintiff and the Class Members.

18 61. Plaintiff and the Class Members therefore seek damages and penalites as a result of  
19 these violations.

#### 20 **NINTH CAUSE OF ACTION**

##### 21 **(Violation of Unfair Competition Law – Bus. & Prof. Code § 17200, et seq.)**

22 62. Plaintiff incorporates all preceding paragraphs as if fully alleged himein.

23 63. Defendants’ failure, *inter alia*, to pay all minimum and overtime wages earned,  
24 failure to provide all required meal and rest periods or compensation in lieu thereof, failure to  
25 maintain accurate records, failure to timely pay wages, and failure to provide accurate itemized wage  
26 statements, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or  
27 fraudulent business act or practice, in violation of Business & Professions Code sections 17200, et  
28 seq.

64. Pursuant to Business & Professions Code section 17203, Plaintiff and the Class Members are entitled to restitution of all unpaid wages, unreimbursed expenses, and othim sums owed, plus attorney's fees and costs, in an amount to be proved at trial.

**TENTH CAUSE OF ACTION**

**(Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)**

65. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

66. Plaintiff gave timely written notice by certified mail to Defendants of the violations of various provisions of the California Labor Code as alleged in this complaint and filed notice of the violations online with the Labor and Workforce Development Agency (“LWDA”).

67. The LWDA did not provide notice of its intention to investigate Defendants' violations after expiration of the 65-day waiting time period, or at any time. Defendants also failed to cure within the time allotted by PAGA. Consequently, Plaintiff's right to file the instant lawsuit then duly accrued.

68. Plaintiff is an “Aggrieved Employee” under PAGA, as he was employed by Defendants during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. 22. Plaintiff brings this action on behalf of himself and all similarly situated aggrieved employees. **The other Aggrieved Employees shall be defined as follows:** “All hourly paid, non-exempt workers who were directly employed by CUSTOM GOODS in California at any time within the one year and sixty-five days prior to the filing of this Complaint; in addition, all hourly paid, non-exempt workers, staffed/assigned by Defendant OS4LABOR to work at CUSTOM GOODS., in California, at any time within the one year and sixty-five days prior to the filing of the initial complaint.”

69. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thimefore, class certification of the PAGA claims is not required.

70. Therefore, under the provisions of PAGA and Labor Code sections 201-202, 203, 204,

1 216, 221-223, 226, 226.7, 226.8, 233-234, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197,  
2 1198, 1199, 2810, and 2810.5, and all applicable Wage Orders as well as all interpretations of these  
3 laws by California Courts and administrative bodies, as well as any other law that is enforceable  
4 through PAGA, Defendants are liable for the following penalties:

- 5 a. All statutorily-specified penalties recoverable under PAGA as enumerated in  
6 therelevant California Labor Code provisions listed herein only if permitted by  
7 the PAGA statute; and
- 8 b. Default PAGA penalties for any violation of the enumerated list of Labor Code  
9 violations without a civil penalty recoverable under the PAGA, all in the default  
10 amounts provided by Labor Code section 2699(f).
- 11 c. The proper measure of penalties under PAGA is the number of violations,  
12 whether those violations were committed as against Plaintiff or any Aggrieved  
13 Employee, whether a party to this action or not.

14 71. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,  
15 Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of himself, the  
18 Class Members and Aggrieved Employees:

- 19 1. For an order that the action, be certified as a class action;
- 20 2. For an order that Plaintiff, be appointed class representative;
- 21 3. For an order that counsel for Plaintiff be appointed class counsel;
- 22 4. For compensatory damages according to proof;
- 23 5. For an order requiring Defendants to make restitution of all amounts wrongfully  
24 withheld from Plaintiff and the class;
- 25 6. For pre-judgment interest as permitted by law;
- 26 7. For civil penalties according to proof, including PAGA penalties;
- 27 8. Attorney's fees and costs reasonably incurred; and

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9. Such other and further relief that the Court deems just and proper.

Dated: December 31, 2020

**CROSNER LEGAL, PC**



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Michael R. Crosner  
Blake R. Jones  
Zachary M. Crosner  
Attorneys for Plaintiff  
ROBERT MARSHALL

**DEMAND FOR JURY TRIAL**

Plaintiff, ROBERT MARSHALL, demands a trial by jury on all claims so triable.

Dated: December 3, 2020

**CROSNER LEGAL, P.C.**



Michael R. Crosner  
Blake R. Jones  
Zachary M. Crosner  
Attorneys for Plaintiff  
ROBERT MARSHALL