

Kevin Mahoney (SBN:235367)
kmahoney@mahoney-law.net
Berkeh Alemzadeh (SBN:324834)
balem@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff ARIEL LOZANO, on behalf of herself and all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF ORANGE

ARIEL LOZANO,

Plaintiff,

v.

Q-FLEX, INC., and DOES 1 through
50, inclusive,

Defendants.

Case No.: 30-2020-01140853-CU-OE-CXC

Assigned for all purposes to: Judge Glenda Sanders
CLASS ACTION Dept: CX101

COMPLAINT FOR DAMAGES

1. Violation of Cal. Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Cal. Labor Code §§ 226.7, Wage Order 1-2001 (Rest Period Violations)
4. Violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of Cal. Labor Code §§ 226, subds. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff ARIEL LOZANO (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class she seeks to
5 represent. (“Plaintiff Class” or “Class Members.”) Plaintiff Class consists of all non-exempt,
6 hourly-paid employees, currently and/or formerly employed by Defendant Q-FLEX INC.
7 (“Defendant”), in the State of California during the Class Period. The term “Class Period” is
8 defined as four (4) years prior to the filing of this complaint through judgment. Plaintiff reserves
9 the right to amend this complaint to reflect a different “Class Period” as further discovery is
10 conducted.

11 2. Plaintiff, individually, and on behalf of Plaintiff Class, seeks relief against
12 Defendant, for Defendant’s practices of violating the applicable Industrial Welfare Commission
13 Wage Orders, Code of Regulations, and California Labor Codes, including: (1) violation of
14 California Labor Code sections 204, 206, 510, and 1194 (recovery of unpaid minimum wage and
15 overtime); (2) violation of California Labor Code sections 226.7, 512 (meal period violations);
16 (3) violation of California Labor Code section 226.7, Wage Order 1 (rest period violations); (4)
17 violation of California Labor Code sections 201, 202, and 203 (failure to pay wages due at
18 separation of employment); (5) violation of California Labor Code sections 201, 202, and 203
19 (failure to issue accurate itemized wage statements); (5) violation of California Labor Code
20 section 226, subsections (a) and (e) (failure to issue accurate itemized wage statements); (6)
21 violation of California Business and Professions Code sections 17200 et seq. (unfair business
22 practices). These violations concern current and past employees of Defendant. These violations
23 concern current and past employees of Defendant.

24 3. At all relevant times herein, Defendant has consistently maintained and enforced
25 against Plaintiff Class the unlawful practices and policies set forth herein.

26 **JURISDICTION AND VENUE**

27 4. Venue is proper in this judicial district and the County of Orange, pursuant to the
28 Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the causes of

1 action alleged herein occurred in this county.

2 5. This Court has personal jurisdiction over Defendant because Defendant resides in,
3 is incorporated in, has its main place of business in, and/or conducts business in the State of
4 California, and a substantial portion of the acts, omissions, events, and transactions constituting
5 the causes of action alleged herein occurred within the State of California, and more specifically,
6 in the County of Orange. (Code Civ. Proc. § 410.10.)

7 6. The California Superior Court has jurisdiction of this matter because the individual
8 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold
9 and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court;
10 and upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the
11 State of California. Further, there is no federal question at issue, as the issues herein are based
12 solely on California statutes and law, including the California Labor Code, Industrial Welfare
13 Commission Wage Orders, California Code of Civil Procedure, California Rules of Court, and
14 the Business & Professions Code. Thus, the above-entitled court maintains appropriate
15 jurisdiction to that this matter.

16 **THE PARTIES**

17 **Plaintiff**

18 7. Plaintiff was employed by Defendant from on around April 30, 2018 through on/in
19 around May 8, 2019, at Defendant's Santa Ana, California location. At all relevant times herein,
20 Plaintiff was employed by Defendant in a non-exempt, hourly position as a general laborer/
21 assembly line worker, and entitled to compensation for all hours worked, including overtime
22 compensation and penalties from Defendant. Plaintiff was employed by Defendants for at least
23 four (4) years prior to the commencement of this action.

24 8. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly
25 situated persons who were employed by Defendant in California during the Class Period.

26 **Defendant(s)**

27 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Q-
28 FLEX INC. is a California design/manufacturing corporation manufacturing flexible circuit

boards whose facilities are in Santa Ana, Orange County, and was the employer of Plaintiff. On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good standing in California, and at all time herein mentioned has regularly conducted business throughout the State of California.

10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief, alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when that information is ascertained.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint venture and/or single business enterprise, integrated enterprise, and/or are agents of one another, are alter egos, joint employers, and conspire with one another to increase profits by engaging in the conduct described in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

ADMINISTRATIVE PREREQUISITES

13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the Labor Workforce Development Agency ("LWDA") and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days

1 have passed without notice from the LWDA.

2 14. On May 7, 2020, prior to the filing of this complaint, Plaintiff gave written notice
3 of the specified provisions alleged to have been violated, including the facts and theories to
4 support the alleged violations, as required by Labor Code section 2699.3. This written notice was
5 given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via
6 the Department of Industrial Relations website. Plaintiff was given a LWDA case number of
7 LWDA-CM- 784649-20. A true and correct copy of Plaintiff's notice to the LWDA and
8 Defendant(s), dated May 7, 2020, is attached hereto as Exhibit A.

9 15. Under Labor Code section 2699.3, subdivision (a)(2)(C), "Notwithstanding any
10 other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a
11 cause of action arising under this part at any time within sixty-five (65) days of the time periods
12 specified in this part." Therefore, Plaintiff intends to amend his/her complaint upon the expiration
13 of the sixty-five (65) day period for the LWDA to provide notice of its intent to investigate
14 Plaintiff's claims, if the LWDA fails to provide notice.

15 **FACTUAL ALLEGATIONS**

16 16. Plaintiff and Plaintiff Class are, and all times relevant herein, have been non-
17 exempt employees within the meaning the California Labor Code, and the implementing rules of
18 the IWC California Wage Orders.

19 17. Plaintiff was employed by Defendant in a non-exempt, hourly position as a general
20 laborer/ assembly line worker from on or around the Relevant Time Period, which is herein
21 defined as the four (4) years preceding the filing of this complaint through date of entry of final
22 judgment. Plaintiff reserves the right to amend the Relevant Time Period to reflect a different
23 time period as necessary.

24 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
25 policies and practices described herein are common across each of Defendant's locations within
26 the State of California.

27 19. During the Relevant Time Period, Plaintiff and Plaintiff Class served in non-
28 exempt positions within Defendant's California facilities in order to fulfill Defendant's functions

1 of manufacturing circuit boards. For example, Plaintiff worked as a general laborer/ assembly line
2 worker washing/cleaning parts, and taking circuit board parts apart and stacking sheets to make
3 books that ultimately made up the circuit boards.

4 20. During the Relevant time Period, Plaintiff and Plaintiff Class were often precluded
5 from taking time, uninterrupted, and duty-free meal and rest breaks in accordance with California
6 law due to the nature of their shifts. Further, Defendant had an automatic deduct policy wherein
7 whether a meal break would be deducted regardless of whether a meal was taken by Plaintiff and
8 Plaintiff Class. Plaintiff and Plaintiff Class worked shifts in excess of five (5) hours, often up to
9 eleven (11) or more hours per shift. Plaintiff alleges that she and Plaintiff Class did not receive at
10 least one duty-free, uninterrupted meal period within the first five (5) hours worked, a second
11 meal period before the start of the tenth (10th) hour of work. (*Brinker Rest. Corp. v. Superior*
12 *Court* (2012) 53 Cal.4th 1004, 1041-42.) When employees were prevented from taking timely and
13 complete meal periods, they did not receive premium pay as compensation for the missed meal
14 period.

15 21. During the Relevant time Period, Ms. Lozano further alleges that she and Plaintiff
16 Class did not receive at least one duty-free, uninterrupted rest period for every four (4) hours
17 worked, or major fraction thereof, as required by the Labor Code. Ms. Lozano and Plaintiff Class
18 were generally precluded from taking rest periods due to Defendant's failure to sufficiently staff
19 shifts to provide relief and thereby allow Ms. Lozano and Plaintiff Class the opportunity to take
20 rest breaks. When employees were prevented from taking rest breaks, they did not receive
21 premium pay for the missed rest break.

22 22. Ms. Lozano alleges that she and Plaintiff Class were not compensated with
23 premium pay for every meal period and rest period that was not provided. Defendant's conduct
24 is actionable as violations of Labor Code sections 226.7 and 512.

25 23. Defendant failed to pay Ms. Lozano and Plaintiff Class at the legally mandated
26 wage rates for all hours worked in violation of California law. Ms. Lozano and Plaintiff Class
27 frequently worked shifts in excess of eight (8) hours per day and forty (40) hours per week.
28 However, Defendant had a policy of compensating Plaintiff and Plaintiff Class overtime rate only

1 when Plaintiff and Plaintiff Class worked in excess of forty (40) hours per week and not when
2 Plaintiff and Plaintiff Class worked in excess of eight (8) hours in a given workday. Defendant
3 frequently failed to compensate Ms. Lozano and Plaintiff Class' for all wages owed to Ms. Lozano
4 and Plaintiff Class as a result of working overtime. Further, Defendants had a systematic under
5 compensation with a rounding policy in place, rounding Plaintiff's time punches to the nearest
6 quarter-hour to the detriment of Plaintiff and Plaintiff Class. Defendant's failure to pay all wages
7 owed for all hours worked, including all applicable overtime rates, to Ms. Lozano and Plaintiff
8 Class is actionable as a violation of Labor Code sections 510 and 1194.

9 24. By failing to include on Ms. Lozano and Plaintiff Class' pay stubs, all rest and
10 meal break premium wages and compensation for all hours worked, Defendant failed to keep
11 accurate payroll records and failed to provide Ms. Lozano and Plaintiff Class with complete and
12 accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174.

13 25. As a further result of Defendant's failure to pay all wages owed as described
14 herein, Defendant also violated Labor Code sections 201, 202, and 203, due to its uniform policy,
15 practice, and procedure of failing to pay all wages earned to former employees at the time their
16 employment ended.

17 **CLASS ALLEGATIONS**

18 26. Plaintiff brings this action on behalf of herself and all other similarly situated
19 persons, as a class action pursuant to California Code of Civil Procedure section 382.

20 27. Plaintiff proposed class consists of and is defined as follows: all individuals who
21 worked for Defendant in a California location, including, but not limited to, general laborers,
22 assembly line workers, and at time during the period from four years prior to the filing of this
23 complaint through the date of judgment ("Class Period.")

24 28. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend
25 or modify the class description(s) with greater specificity or further division into subclasses or
26 limitation to particular issues.

27 29. This action has been brought and may be maintained as a class action pursuant to
28 Code of Civil Procedure section 382 because there is a well-defined community of interest in the

1 litigation and because the proposed classes are easily ascertained by Defendant's personnel and
2 payroll records.

3 **Numerosity**

4 30. The potential members of the class as defined are so numerous that joinder of all
5 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
6 Plaintiff is informed and believes that Defendant has employed more than fifty (50) during the
7 Class Period.

8 **Commonality**

9 31. There are common questions of law and fact arising out of Defendant's conduct,
10 as described herein, including, but not limited to:

- 11 a. Whether Defendant failed to pay all wages, including minimum and overtime
12 wages earned and due to Plaintiff and Plaintiff Class;
13 b. Whether Defendant failed, and continues to fail, to provide meal periods to
14 Class Members;
15 c. Whether Defendant failed, and continues to fail, to authorize and permit Class
16 Members to take rest periods;
17 d. Whether Defendant failed to furnish to Plaintiff and Class Members wage
18 statements containing all information required by Labor Code section 226,
19 subd. (a);
20 e. Whether Defendant failed to pay all unpaid wages earned during the course
21 of their employment upon separation of employment; and
22 f. Whether Defendant engaged in unfair/unlawful business practices.

23 **Typicality**

24 32. The claims of the Plaintiff are typical of the claims for the Plaintiff Class, all of
25 whom have incurred and/or will incur damages, as a result of Defendant's common course of
26 conduct and common policies and practices. The claims of Plaintiff are typical because Defendant
27 subjected all of its non-exempt employees to the identical violations of the California Industrial
28 Welfare Commission Wage Orders, California Code of Regulations, California Labor Code, and

1 California Business & Professions Code, among other statutes.

2 **Adequacy of Representation**

3 33. The Plaintiff will fairly and adequately represent and protect the interests of the
4 Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's
5 attorneys are competent, well-versed, and experienced in litigating employment class actions and
6 other complex litigation matters.

7 **Superiority of Class Action**

8 34. Under the facts and circumstances set forth above, a class action is superior to any
9 other method available for both the fair and efficient adjudication of the rights of each class
10 member inasmuch as joinder of individual relatively small claims of Class Members is not
11 practical, and if each employee were required to file an individual lawsuit, the corporate defendant
12 would necessarily gain an unconscionable advantage since they would be able to exploit and
13 overwhelm the limited resources of each individual plaintiff. Requiring each Class Member to
14 pursue an individual remedy would also discourage the assertion of lawful claims by employees
15 fearful of retaliation and permanent damage to their careers at present and/or subsequent
16 employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications with
17 respect to the individual Class Members against Defendant herein further support class
18 certification.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES**

21 **(Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, and 1182.12)**

22 **(By Plaintiff against Defendant)**

23 35. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
24 as if fully alleged.

25 36. Any employee receiving less than the legal minimum wage or legal overtime
26 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees,
27 and costs of suit. (Lab. Code, § 1194, subd. (a).)

28 ///

1 37. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
2 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January
3 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For
4 employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the
5 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
6 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00)
7 per hour. Plaintiff is informed and believes Defendant employed more than 26 employees.

8 38. Notwithstanding any other provision of the Labor Code, hourly minimum wage
9 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
10 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194; IWC Wage
11 Order 1-2001, Sect.4).

12 39. Additionally, many California cities and counties impose a separate minimum
13 wage higher than that set by section 1182.12, which may be applicable to Plaintiff and members
14 of the Putative Class.

15 40. In any action to recover payment of wages less than the minimum wage an
16 employee shall be entitled to recover liquidated damages in an amount equal to the wages
17 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

18 41. Any work in excess of eight (8) hours in any workday and any work in excess of
19 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
20 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a); IWC Wage Order 1-
21 2001, Sect. 3(A)). Any work in excess of twelve (12) hours in a workday shall be compensated
22 at the rate of twice the regular rate of pay for an employee. (*Ibid.*)

23 42. All wages earned in employment are due and payable twice during each calendar
24 month on dates designated in advance by the employer. (Lab. Code, § 204.)

25 43. In case of a dispute over wages, the employer shall pay, without condition and
26 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
27 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

28 ///

1 44. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty
2 (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class all minimum wage,
3 overtime premiums, and/or double-time premiums for all hours worked in excess of eight (8)
4 hours per day and/or forty (40) hours per week for work performed for Defendant. Plaintiff and
5 Plaintiff Class were not paid all wages earned. Pursuant to Labor Code sections 510, 1182.12,
6 and 1194, the Plaintiff Class seek the payment of all minimum wage, overtime, and/or double-
7 time compensation which they earned and accrued four (4) years prior to filing this complaint,
8 according to proof.

9 45. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages,
10 attorneys' fees, costs pursuant to California Labor Code sections 218.5 and 1194, and
11 prejudgment interest.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

14 **(Labor Code §§ 226.7 and 512)**

15 **(By Plaintiff against Defendant)**

16 46. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
17 as if fully alleged.

18 47. Labor Code sections 226.7 and 512 provide that no employer shall employ any
19 person for a work period of more than five (5) hours without providing a meal period
20 uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work
21 period of more than ten (10) hours without a second meal period of not less than thirty (30)
22 minutes.

23 48. Labor Code section 226.7 provides that if an employer fails to provide an
24 employee a meal period in accordance with this section, the employer shall pay the employee one
25 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
26 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
27 legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or not
28 relieving employees from all work duties during meal periods thereby preventing employees from

1 taking legally compliant meal periods.

2 49. At all times relevant hereto, Plaintiff and Plaintiff Class have worked shifts of
3 more than five (5) hours in a workday. At varying times relevant hereto, Plaintiff and Plaintiff
4 Class have worked shifts of more than ten (10) hours in a workday.

5 50. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to
6 damages in the amount equal to one (1) hour of wages at their regular rate of compensation for
7 each missed meal break, in an amount according to proof.

8 51. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the
9 Plaintiff Class, request recovery of meal period compensation which they are owed beginning
10 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
11 against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other
12 statutes. Pursuant to Labor Code section 218.5, Code of Civil Procedure section 1021.5, and any
13 other provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs
14 incurred by them in this action.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

17 **(Labor Code § 226.7)**

18 **(By Plaintiff against Defendant)**

19 52. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
20 as if fully alleged.

21 53. Labor Code section 226.7 provides that employers authorize and permit all
22 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
23 major fraction thereof.

24 54. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
25 provide and employee rest periods in accordance with this section, the employer shall pay the
26 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
27 that the rest period is not provided. Plaintiff and Plaintiff Class consistently worked over four (4)
28 hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

1 55. Defendant failed to reasonably make available rest breaks to Plaintiff and Plaintiff
2 Class throughout the Relevant Time Period.

3 56. Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one (1)
4 hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Labor Code section
5 218.5, Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests
6 the court award reasonable attorneys' fees and costs incurred by them in this action.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

9 **(Labor Code §§ 201, 202, 203)**

10 **(By Plaintiff against Defendant)**

11 57. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
12 as if fully alleged herein.

13 58. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's
14 ongoing unfair business practices, Defendant failed to pay all employees all wages earned during
15 their employment at the time of their separation in violation of Labor Code sections 201 and 202
16 and 203.

17 59. Labor Code section 201 provides that an employer is required to pay an employee
18 whose employment is terminated by the employer all wages earned and unpaid immediately upon
19 termination.

20 60. Labor Code section 202 requires an employer pay to an employee who quits his or
21 her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

22 61. Labor Code section 203 provides that an employer who fails to pay all wages
23 earned and due an employee who is discharged or who quits within the timeframe set forth in
24 sections 201 and 202, the wages of the employee shall continue as a penalty, at the employee's
25 regular rate of pay, from the due date at the same rate of pay until paid, but not more than thirty
26 (30) days. In other words, the employer owes the employee his or her daily rate of pay at their
27 regular rate of pay for each day the full amount of unpaid wages is not paid, for a penalty of up
28 to 30 days' wages.

1 62. Plaintiff and members of the Plaintiff Class who terminated employment within
2 four (4) years of the filing of this complaint until the date of entry of judgment, without being
3 paid the proper payments are entitled to thirty (30) days of pay at their regular rate of pay as
4 waiting time penalties, as appropriate to Plaintiff and Plaintiff Class.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

7 **(Labor Code §§ 226, 1174)**

8 **(By Plaintiff against Defendant)**

9 63. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
10 as if fully alleged herein.

11 64. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
12 Orders provide that employers must keep records and provide employees with itemized wage
13 statements showing all hours worked and each applicable rate of pay in effect during the pay
14 period with the corresponding number of hours worked at each hourly rate.

15 65. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
16 location in California or at the plant or establishment at which the employee is employed, payroll
17 records showing the hours worked daily, and the wages paid to each employee. Labor Code
18 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
19 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
20 paid by personal check or cash—an accurate itemized wage statement in writing, including
21 specified information, including, but not limited to: (1) gross wages earned; (2) total hours worked
22 by the employee...(5) net wages earned... and (9) all applicable hourly rates of pay and
23 corresponding number of hours. Labor Code section 226, subdivision (e) provides that if an
24 employer knowingly and intentionally fails to provide a statement itemizing, inter alia, the gross
25 and net wages earned, the total hours worked by the employee and the applicable hourly overtime
26 rates, causing the employee injury, then the employee is entitled to recover the greater of all actual
27 damages or fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for
28 each subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and

believes that Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

66. The IWC Wage Orders require that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work period, the total daily hours worked by each employee, and the total hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that Defendant willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant's records: (1) failed to include the proper regular hours worked in an (8) hour or forty (40) hour work week; (2) failed to include the proper overtime hours worked in excess of eight (8) hours in a day or forty (40) hours in a week. Further, Plaintiff believes, that Defendant did not maintain records for Plaintiff and Plaintiff Class reflecting their time actually worked and applicable rate of pay.

67. An employee is deemed to suffer injury if the employer fails to provide an accurate wage statement containing all of the required information set forth in Labor Code section 226, subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for employees to determine whether they were paid all wages due without complicated calculations and/or reconstruction of records required to be maintained by the employer.

68. For each employee suffering an injury as a result of Defendant's knowing and intentional failure to provide an accurate, itemized wage statement, the employee is entitled to recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period. Plaintiff alleges the "initial violation" occurs in the pay period following receipt of the letter sent by Plaintiff to the LWDA in notifying the employer of the potential violations.

69. Plaintiff is informed and believe that Defendant's failure to keep accurate payroll records, as described above, violated Labor Code section 1174, subdivision (d) and section 226,

subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor Code section 2699, subdivision (f)(2), Plaintiff and the Plaintiff Class are entitled to penalties of \$100.00 for the initial violation, and \$200.00 for each subsequent violation, for every pay period during which these records and information were not kept by Defendant.

70. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information and provide to Plaintiff and Class Members accurate itemized wage statements, as described above, was knowing and intentional, and Plaintiff and Plaintiff Class are entitled to statutory penalties for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

SIXTH CAUSE OF ACTION

UNFAIR/UNLAWFUL BUSINESS PRACTICES

(Business and Professions Code §§ 17200 *et seq.*)

(By Plaintiff against All Defendants)

71. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

72. Plaintiff brings this claim individually and on behalf of Class Members.

73. Business & Professions Code section 17200 ("UCL") prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

74. Business and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the UCL.

75. Labor Code section 90.5, subdivision (a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

///

1 76. Beginning at an exact date unknown to Plaintiff, but at least since the date four
2 years prior to the filing of this complaint, Defendant has committed acts of unfair competition as
3 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
4 business practices and acts described in this complaint, including, but not limited to, violations of
5 Labor Code sections 201, 202, 203, 226, 226.7, 510, 1174, 1194 as well as other statutes as
6 described above.

7 77. The violations of these laws and regulations, as well as of fundamental California
8 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
9 Business and Professions Code sections 17200 et seq.

10 78. As a result of these actions, Plaintiff, on information and belief, alleges that
11 Defendant is able to unfairly compete with other comparable companies in the State of California
12 in violation of Business & Professions Code sections 17000 et. seq. and sections 17200 et. seq.
13 Due to these unlawful, unfair, and/or fraudulent business practices, Defendant has gained a
14 competitive advantage over other comparable companies doing business in the State of California.

15 79. The victims of these unlawful, unfair, and/or fraudulent business practices include,
16 but are not limited to, Plaintiff, putative class members, competing circuit board manufacturing
17 companies in the State of California, and the general public. Plaintiff is informed and believes,
18 and thereon alleges, that Defendant performed the above-mentioned acts with the intent of gaining
19 an unfair competitive advantage and thereby injuring Plaintiff, putative class members, other
20 competitors, and the general public.

21 80. Plaintiff's success in this action will enforce important rights affecting the public
22 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
23 of herself.

24 81. Business and Professions Code sections 17203 provides that a court may make
25 such orders or judgments as may be necessary to prevent the use or employment by any person
26 of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate
27 to prevent Defendant from repeating their unlawful, unfair, and fraudulent business acts and
28 business practices alleged above.

82. Business and Professions Code section 17203 provides that the Court may restore to any person in interest, any money or property that may have been acquired by means of such unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business & Professions Code section 17205.

84. Plaintiff requests injunctive relief pursuant to Business & Professions Code section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged herein.

PRAYER FOR RELIEF

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382:

3. The Court appoint Mahoney Law Group, APC as class counsel;

5. For restitution of all monies due to Plaintiff and Plaintiff Class from the

1 unlawful/unfair business practices of Defendant;

2 6. For injunctive relief;

3 7. For statutory and civil penalties according to proof;

4 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
5 subdivision (e), section 218.5, and section 1194; Code of Civil Procedure section 1021.5, and/or
6 other applicable laws statutes; and

7 9. That the Court award such other and further relief as this Court may deem
8 appropriate.

9
10 Dated: May 7, 2020

MAHONEY LAW GROUP, APC

11
12
13 By:


14 Kevin Mahoney, Esq.
15 Berkeh Alemzadeh, Esq.
16 Attorney for Plaintiff ARIEL LOZANO, as
17 an individual, and on behalf of all similarly
18 situated employees.
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Berkeh Alemzadeh, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
balem@mahoney-law.net

April 27, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL# 7019 0700 0001 7488 7087

Return Receipt Requested

Q-FLEX INC.
1301 E. Hunter Ave.,
Santa Ana, CA 92705

Re: Ariel Lozano v Q-FLEX Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Q-FLEX Inc.

From: Ariel Lozano, on behalf of herself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Ms. Ariel Lozano ("Ms. Lozano" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Q-FLEX Inc. (collectively, "Q-FLEX" or "Employer") is a California corporation that manufacture circuits throughout California. Ms. Lozano began her employment with Employer in or around April 30, 2018 until her termination on or around May 8, 2019.

Ms. Lozano alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194, by failing to provide Ms. Lozano and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all

wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Ms. Lozano and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Q-FLEX failed to provide Ms. Lozano and other aggrieved employees with meal and rest periods, or premium compensation in lieu thereof, in accordance with California law.

Ms. Lozano alleges that she and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Ms. Lozano and other aggrieved employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 10th hour of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42. In fact, Employer had an auto-deduct policy whereby Employer automatically deducted meal breaks taken by Ms. Lozano and another aggrieved employee, regardless of whether Ms. Lozano and other aggrieved employees actually took an uninterrupted, duty free meal break. When employees were prevented from taking timely and complete meal periods, they did not receive premium pay as compensation for the missed meal period.

Ms. Lozano further alleges that she and other aggrieved employees did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Ms. Lozano and other aggrieved employees were generally precluded from taking rest periods due to Employer's failure to sufficiently staff shifts to provide relief and thereby allow Ms. Lozano and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Ms. Lozano alleges she and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

Q-FLEX failed to pay Ms. Lozano and other aggrieved employees for all hours worked, in accordance with California law, including both minimum wage and overtime

Employer failed to pay Ms. Lozano and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Ms. Lozano and other aggrieved employees allege that Employer utilized a rounding policy with respect to the hours worked by Ms. Lozano and other aggrieved employees to the nearest quarter-hour worked to the detriment of Ms. Lozano and other aggrieved employees. In doing so, Employer failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code. Employer's failure to provide Ms. Lozano and other aggrieved employees pay for all hours worked is a violation of California's minimum wage laws, as Ms. Lozano and other aggrieved employees should have been provided at least the applicable minimum wage for all hours worked.

Further, as Ms. Lozano and other aggrieved employees already worked shifts of at least eight (8) hours per day, all hours worked but not compensated were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay. However, Employer had a policy whereby they would only compensate Ms. Lozano and other aggrieved employees at a rate of one-and-a-half times each employee's base rate of pay when they worked in excess of forty (40) hours per week, not when they worked in excess of eight (8) hours in one work day. To the extent such hours exceeded twelve (12) in one day or eight (8) on the seventh (7th) consecutive day worked, such hours were required to be compensated at a rate of at least two (2) times each employee's base rate of pay. Furthermore, Employer had a policy and/or practice of utilizing a "rounding" policy which operated to the benefit of the Employer thus depriving Ms. Lozano and other aggrieved employees from being paid all minimum wages and overtime wages as a result of Employer's unlawful "rounding" policy.

Employer's failure to pay minimum wage and applicable overtime rates to Ms. Lozano and other aggrieved employees as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

Q-FLEX failed to provide Ms. Lozano and other aggrieved employees compliant wage statements, and failed to pay all wages earned at the time their employment ended

Ms. Lozano and other aggrieved employees received wage statements that failed to list the total hours worked as required by Labor Code 226. Further, by failing to include on Ms. Lozano's and other aggrieved employees' pay stubs all rest and meal break premium wages, and full compensation for all hours worked, Employer failed to keep accurate payroll records and failed to provide Ms. Lozano and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Lozano becomes aware of additional compensation owed or losses incurred by Ms. Lozano or by any other aggrieved employee of the Employer, Ms. Lozano expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

LABOR AND WORKFORCE DEVELOPMENT AGENCY

April 27, 2020

Page 4 of 4

Mahoney Law Group, APC

Berkeh Alemzadeh

249 E. Ocean Blvd., Suite 814

Long Beach, CA 90802

Tel: (562) 590-5550

Email: balem@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to be 'Berkeh Alemzadeh', with a stylized flourish at the end.

Berkeh Alemzadeh, Esq.

MAHONEY LAW GROUP, APC