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ASHTIN SEWELL-CHERRY

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

ASHTIN SEWELL-CHERRY, an individual,
Plaintiff,

v.

DUDES BREWING COMPANY, LLC, a
limited liability company; and DOES 1 through
20, inclusive,

Defendants.

Case No. **20STCV30664**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §98.6);**
- 2. RETALIATION (LAB. CODE §§1102.5, 1102.6);**
- 3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 5. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 6. PENALTIES FOR FAILURE TO PAY WAGES (CAL. LABOR CODE §558);**
- 7. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 8. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 9. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);**

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**10. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.); AND**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ASHTIN SEWELL-CHERRY, and for causes of action against
the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County,
because Defendants' obligations and liability arise therein, because Defendants maintain offices and
transact business within Los Angeles County, and because the work that is the subject of this action was
performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff at the time of the filing of this complaint, is a resident of the County of Los
Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant DUDES BREWING COMPANY, LLC (hereinafter referred to as "Defendant") was
and is limited liability company doing business in the County of Los Angeles, State of California.

4. Defendant is hereinafter collectively referred to as "Employer."

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Employers owned and operated a private brewery.

6. At all times relevant herein, Employer and DOES 1-20 were Plaintiff's employers, joint
employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
persons and are therefore subject to the jurisdiction of this Court.

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1 7. At all times relevant herein, Employer and DOES 1-20 were Plaintiff's employers, joint
2 employers and/or special employers within the meaning of the Labor Code and the applicable Industrial
3 Welfare Commission Order, and are each an "employer or other person acting on behalf of an employer"
4 as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that basis.

5 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
6 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
7 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
8 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
9 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
10 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
11 alleged hereinafter.

12 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
13 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
14 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
15 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
16 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
17 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

18 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
19 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
20 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
21 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
22 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
23 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
24 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
25 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
26 actually causing Plaintiff harm.

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1 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
2 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
3 and/or failures to act by each Defendant acting individually, jointly and severally.
4

5 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

6 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
7 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
8 defendants have ceased to exist.

9 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
10 purported corporate existence, Employer and DOES 1-20 are, in reality, one and the same, including, but
11 not limited to because:

12 a. Employer is completely dominated and controlled by one another and DOES 1-20,
13 who personally committed the frauds and violated the laws as set forth in this complaint, and who have
14 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish
15 some other wrongful or inequitable purpose.

16 b. Employer and DOES 1-20 derive actual and significant monetary benefits by and
17 through one another's unlawful conduct, and by using one another as the funding source for their own
18 personal expenditures.

19 c. Employer and DOES 1-20, while really one and the same, were segregated to
20 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
21 accomplishing some other wrongful or inequitable purpose.

22 d. Employer does not comply with all requisite corporate formalities to maintain a
23 legal and separate corporate existence.

24 e. The business affairs of Employer and DOES 1-20 are, and at all times relevant
25 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
26 inextricable confusion. Employer is, and at all times relevant hereto was, used by one another and DOES
27 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the
28 alter ego of one another and DOES 1-20. The recognition of the separate existence of Defendants would

1 not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff
2 for violations of the Government Code and other statutory violations. The corporate existence of
3 Employers and DOES 1-20 should be disregarded in equity and for the ends of justice because such
4 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

5 14. Accordingly, Employer constitute the alter ego of one another and DOES 1-20, and the
6 fiction of their separate corporate existence must be disregarded.

7 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Employer and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
9 enterprise, and that Plaintiff was an employee of Employer and DOES 1-20. Plaintiff performed services
10 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
11 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
12 Defendants' business was and is conducted.

13 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
14 between DOES 1-20, Employer, or any of them, (1) there is an express or implied agreement of
15 assumption pursuant to which Employer and/or DOES 1-20 agreed to be liable for the debts of the other
16 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
17 to a consolidation or merger of the two corporations, (3) Employer and/or DOES 1-20 are a mere
18 continuation of the other Defendants, or (4) the transfer of assets to Employer and/or DOES 1-20 is for
19 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employer and/or DOES
20 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

21 **FACTUAL ALLEGATIONS**

22
23 17. On or about June 2019, Employer hired Plaintiff to work as a bartender. Plaintiff was a
24 full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily. Plaintiff's
25 employment with Employer ended approximately in September 2019 after Plaintiff's employment with
26 Employer was wrongfully terminated.

27 18. Between June 2019 and July 2019, Plaintiff's hourly wage rate was \$13.25. During this
28 time period, Plaintiff's fixed schedule was five days per week for approximately 8 to 10 hours per day.

1 19. Between July 2019 and September 2019, Plaintiff's hourly wage rate was \$14.25. During
2 this time period, Plaintiff's fixed schedule was five days per week for approximately 8 to 10 hours per
3 day.

4 20. Plaintiff worked approximately 10 hours of overtime each week but received only
5 Plaintiff's regularly hourly wage rate for these hours, with no overtime premium.

6 21. Defendants failed to pay the overtime premium wages for all hours worked beyond 8 hours
7 in a day or 40 hours in a week.

8 22. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
9 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
10 thereof. Defendants had no policy, procedure, or practice for Plaintiff to report missed rest breaks or
11 recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of additional
12 wages for each workday that the rest break was not provided.

13 23. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
14 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
15 worked.

16 24. Plaintiff received inaccurate paystubs that did not comply with Labor Code § 226, because
17 they failed to show the correct amount of overtime hours Plaintiff worked, failed to show pay for missed
18 meal and rest periods, failed to show the amount of wages earned and owed to Plaintiff.

19 25. Defendants' conduct described herein was undertaken, authorized, and/or ratified
20 Defendants' officers, directors and/or managing agents, including, but not limited to * and those identified
21 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
22 create policy for Defendants. The aforementioned conduct of said managing agents and individuals was
23 therefore undertaken on behalf of Defendants who further had advanced knowledge of the actions and
24 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
25 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
26 and designated herein as DOES 1 through 20, inclusive.

27 26. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
28 commissions, benefits and loss or diminution of earning capacity.

1 27. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
2 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
3 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
4 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
5 Court.

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7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 28. At all relevant times, PAGA was applicable to Plaintiff and his employment with
9 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency ("LWDA").

11 29. Plaintiff and other employees of Defendants are "aggrieved employees" as defined by
12 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
13 violations were committed against them.

14 30. On or about April 9, 2020, Plaintiff gave written notice of Defendants' violations of
15 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
16 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

17 31. The LWDA did not provide notice of its intention to investigate Defendants' violations
18 within 65 calendar days of the April 9, 2020 notice. In doing so, Plaintiff has satisfied the administrative
19 prerequisites under PAGA to recover civil penalties against Defendants.

20
21 **FIRST CAUSE OF ACTION**

22 **RETALIATION**

23 **LABOR CODE §98.6**

24 **AGAINST ALL DEFENDANTS**

25 32. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
26 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

27 33. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
28 employee for political activities; for complaining that he or she is owed unpaid wages, for

1 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
2 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
3 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
4 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
5 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
6 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
7 against an employee who, among other things, has exercised her or her rights under that Chapter,
8 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
9 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
10 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
11 thousand dollars (\$10,000.00) for each violation of that section.

12 34. Plaintiff is informed and believe, and based thereupon allege, that Plaintiff was terminated
13 from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not being paid
14 all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal and/or rest
15 breaks. Defendants' retaliatory animus is evidenced by, among other things, Defendant's termination of
16 Plaintiff's employment.

17 35. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
18 Defendants, and Defendants' officers and/or managing agents, and those identified herein as DOES 1-
19 20, who were authorized and empowered to make decisions that reflect and/or create policy for
20 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
21 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
22 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
23 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
24 and designated herein as DOES 1-20, inclusive.

25 36. The damage allegations of the above-stated paragraphs, inclusive, are herein incorporated
26 by reference.

27 37. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
28 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

1 38. Because the acts taken toward Plaintiff were carried out by managerial employees acting
2 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
3 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
4 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

5
6 **SECOND CAUSE OF ACTION**
7 **FOR RETALIATION**
8 **IN VIOLATION OF LABOR CODE §§ 1102.5 AND 1102.6**
9 **AGAINST ALL DEFENDANTS**

10 39. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though
11 set forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

12 40. At all relevant times, Labor Code §1102.5(a) was in full force and effect and was
13 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,
14 from discharging an employee or in any manner discriminating or retaliating against, or taking any
15 adverse action against, an employee because, among other things, the employee disclosed information
16 to a government or law enforcement agency, or to a person with authority over the employee or another
17 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if
18 the employee has reasonable cause to believe that the information discloses a violation of state or
19 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
20 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor
21 Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability
22 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of
23 this section.

24 41. Plaintiff reported suspected violations of the Labor Code to Plaintiff's supervisors.

25 42. Defendants subjected Plaintiff to the adverse employment action, including without
26 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to
27 Plaintiff's supervisors.

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1 43. Plaintiff's reports of these violations were a motivating and contributing factor for the
2 adverse employment actions by Defendants against Plaintiff.

3 44. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and
4 such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

5 45. The damage allegations of the above-stated paragraphs, inclusive, are herein
6 incorporated by reference.

7 46. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
8 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

9 47. The foregoing conduct of Defendants individually, or by and through their managing
10 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on
11 by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to
12 cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice,
13 oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an
14 amount appropriate to punish or make an example of Defendants.

15
16 **THIRD CAUSE OF ACTION**
17 **FOR WRONGFUL TERMINATION**
18 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
19 **AGAINST ALL DEFENDANTS**

20 48. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though
21 set forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

22 49. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
23 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
24 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
25 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
26 individual employees and job applicants who could not otherwise afford to protect themselves from
27 violations of the Labor Code.

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1 50. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
2 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
3 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
4 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
5 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
6 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
7 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether
8 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
9 the law in California is that an employee's good faith but mistaken belief in the illegality of his co-
10 workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-
11 blowing context.

12 51. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
13 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
14 Plaintiff's damages as stated below.

15 52. The damage allegations of the above-stated paragraphs, inclusive, are herein
16 incorporated by reference.

17 53. The foregoing conduct of Defendants individually, or by and through their officers,
18 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
19 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
20 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
21 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
22 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION
LABOR CODE §§510, 1194
AGAINST ALL DEFENDANTS

54. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

55. Labor Code §510 requires employers to pay their non-exempt employees one and one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime compensation for the first eight hours of work done on the seventh consecutive day of work done in any work week, and double-time compensation for any work done beyond the first eight hours on the seventh consecutive day of work.

56. At all relevant times, Defendants required Plaintiff to work more than eight hours per day and/or more than 40 hours per workweek.

57. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime compensation required by Labor Code §510, 8 Code of Regulations, and the applicable Industrial Welfare Commission Order.

58. From June 2019 to September 2019, Plaintiff worked 10 hours of overtime each week, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed to pay Plaintiff the requisite overtime wages in each of the following ways:

a. From approximately June 2019 to July 2019, Plaintiff worked an average of 2 hours of overtime per workday. Plaintiff's overtime rate for this period was \$19.76 per hour. During this time, Plaintiff worked an average of 10 hours of overtime per week. Therefore, Plaintiff is owed \$19.76 for each of those 40 hours of overtime, totaling \$790.40.

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1 b. From approximately July 2019 to September 2019, Plaintiff worked an average of
2 2 hours of overtime per workday. Plaintiff's overtime rate for this period was \$21.38 per hour. During
3 this time, Plaintiff worked an average of 10 hours of overtime per week. Therefore, Plaintiff is owed
4 \$21.38 for each of those 80 hours of overtime, totaling \$1,710.40.

5 59. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
6 Code §510, the applicable 8 Code Regulations section, and the applicable Industrial Welfare Commission
7 Order.

8 60. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
9 of \$2,500.80, above and beyond the minimum wages sought in the preceding cause of action for these
10 same hours.

11 61. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
12 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
13 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

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15 **FIFTH CAUSE OF ACTION**
16 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
17 **LABOR CODE §§226.7, 512**
18 **AGAINST ALL DEFENDANTS**

19 62. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
20 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

21 63. Labor Code §512 requires employers to provide every employee with an uninterrupted
22 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

23 64. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
24 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
25 thereof.

26 65. From June 2019 to September 2019, Plaintiff regularly worked in excess of five hours per
27 day, and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest
28 periods on each day of work

1 66. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
2 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
3 applicable sections of 8 Code of Regulations and the applicable Industrial Welfare Commission Order.

4 67. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
5 Code of Regulations and the applicable Industrial Welfare Commission Order. Consequently, Plaintiff
6 is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever
7 is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of pay at
8 Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that
9 Plaintiff was denied such rest periods, calculated as follows:

10 68. From approximately June 2019 to July 2019, Plaintiff's statutory 30-minute meal periods
11 were missed, interrupted or cut short on approximately 20 separate instances. Consequently, Plaintiff is
12 owed one hour of pay at \$13.25 for each day, or \$265.00 plus interest thereon, for unpaid missed or
13 interrupted meal periods. During this same time period, Plaintiff was deprived of one or more of
14 Plaintiff's statutory 10-minute rest periods on approximately 20 days. Consequently, Plaintiff is owed
15 one hour of pay at \$13.25 for each day, or \$265.00, plus interest thereon, for unpaid rest periods. Thus,
16 Plaintiff is owed a total of \$530.00, plus interest thereon, for unpaid meal and rest periods for this time

17 69. period.

18 70. From approximately July 2019 to September 2019, Plaintiff's statutory 30-minute meal
19 periods were missed, interrupted, or cut short on approximately 40 separate instances. Consequently,
20 Plaintiff is owed one hour of pay at \$14.25 for each day, or \$570.00 plus interest thereon, for unpaid
21 missed or interrupted meal periods. During this same time period, Plaintiff was deprived of one or more
22 of Plaintiff's statutory 10-minute rest periods on approximately 40 days. Consequently, Plaintiff is owed
23 one hour of pay at \$14.25 for each day, or \$570.00, plus interest thereon, for unpaid rest periods. Thus,
24 Plaintiff is owed a total of \$1,140.00, plus interest thereon, for unpaid meal and rest periods for this time
25 period.

26 71. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
27 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

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1 72. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
2 such amounts in the combined amount of \$1,670.00, pursuant to Labor Code §226.7(b), plus interest
3 thereon and costs of suit.

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5 **SIXTH CAUSE OF ACTION**
6 **FOR FAILURE TO PAY WAGES DUE**
7 **LABOR CODE §558**
8 **AGAINST ALL DEFENDANTS**

9 73. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
10 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

11 74. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
12 required by the applicable 8 Code of Regulations, as set forth hereinabove. As alleged herein, Defendants
13 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

14 75. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510,
15 the applicable 8 Code of Regulations, and the applicable Industrial Welfare Commission Order``.

16 76. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
17 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
18 recover such amounts, plus interest thereon, attorneys' fees and costs.

19 77. Labor Code §558(a) provides that any person acting on behalf of an employer who
20 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
21 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
22 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
23 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
24 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

26 78. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
27 above based upon Defendants' underpayment of minimum and overtime wages, as well as unpaid rest
28 premiums. Within the one year immediately preceding the filing of this Complaint, Defendants, and each

1 of them, violated Labor Code §558 on 6 pay periods, the first of which Defendants are penalized \$50.00,
2 and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558
3 penalties of \$550.00, plus an additional penalty amount to cover underpaid wages and/or premiums for a
4 total of \$4,720.80.

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6 **SEVENTH CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
8 **LABOR CODE §§226 ET SEQ.**
9 **AGAINST ALL DEFENDANTS**

10 79. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
11 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

12 80. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
13 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
14 total deductions and net wages earned. An employer who violates these code sections is liable to its
15 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
16 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
17 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
18 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
19 at all.

20 81. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
21 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
22 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

23 82. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
24 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
25 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
26 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
27 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
28 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying

1 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
2 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
3 of the required information, including hours actually worked.

4 83. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

5 84. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
6 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
7 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
8 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
9 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
10 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
11 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
12 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

13 85. Plaintiff was paid on a basis, and therefore Defendants violated Labor Code §226
14 approximately 6 times during the last year that Plaintiff worked for Defendants. Consequently,
15 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
16 amount of \$4,000.00, whichever is greater.

17 86. In addition thereto, for Defendant's 6 violations, Defendants are penalized \$50.00 for the
18 first violation, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor
19 Code §226.3 penalties of \$5,800.00.

20 87. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
21 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
22 applicable provisions, as well as attorneys' fees and costs.

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1 **EIGHTH CAUSE OF ACTION**
2 **FOR WAITING TIME PENALTIES**
3 **LABOR CODE §§201-203**
4 **AGAINST ALL DEFENDANTS**

5 88. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
6 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

7 89. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
8 other compensation due immediately upon termination or within 72 hours of resignation, as required.
9 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
10 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
11 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
12 203.

13 90. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
14 203.

15 91. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
16 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
17 more than \$3,420.00 in wait time penalties, calculated based on a daily average wage of \$114.00, times
18 30 days (i.e., \$3,420.00).

19 92. Based on Defendants' conduct as alleged herein, Defendants are liable for \$3,420.00 in
20 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
21 fees and costs.

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23 **NINTH CAUSE OF ACTION**
24 **FOR PRIVATE ATTORNEY GENERAL ACT**
25 **LABOR CODE §2699**
26 **AGAINST ALL DEFENDANTS**

27 93. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
28 forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

1 94. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
2 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
3 for Defendants' violations of the California Labor Code.

4 95. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
5 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
6 previously pleaded in this Complaint.

7 96. On April 9, 2020, more than 63 calendar days before filing this Complaint, Plaintiff
8 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
9 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
10 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ §512,
11 226.7, 226(a)(1)-(5), 1174, 98.6, 1102.5, 1102.6, 226.3, and 558, each of which is enumerated among the
12 serious violations set forth in Labor Code §2699.5.

13 97. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
14 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
15 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

16 98. As a direct and proximate result of Defendants' California Labor Code violations as set
17 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
18 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
19 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
20 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
21 provide for a penalty, §§512, 226.7, 226(a)(1)-(5), 1174, 98.6, 1102.5, 1102.6, 226.3, and 558.

22 99. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
23 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

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TENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

100. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows on behalf of himself and all Aggrieved employees.

101. Defendants' violations of the applicable 8 Code of Regulations section, the applicable Industrial Welfare Commission Order, Labor Code §§512, 226.7, 226(a)(1)-(5), 1174, 98.6, 1102.5, 1102.6, 226.3, and 558, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

102. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

103. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

104. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

105. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

106. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;

107. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, the applicable Industrial Welfare Commission Order, and the applicable 8 Code of Regulations section, in the amount of no less than \$2,500.80;

108. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than \$1,670.00;

109. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$4,720.80;

110. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

111. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$5,800.00;

112. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than \$3,420.00;

113. For statutory penalties pursuant to Labor Code §2699(f) on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees;

114. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter.

WHEREFORE, Plaintiff further seeks judgment against Defendants, and each of them, in an amount according to proof, as follows:

1 115. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
2 any other basis;

3 116. For post-judgment interest; and

4 117. For any other relief that is just and proper.

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6 DATED: August 12, 2020

THE DOMINGUEZ FIRM, LLP

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8 By: 

Jace H. Kim, Esq.
Carlos A. Peres, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
Ashtin Sewell-Cherry

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12 **JURY TRIAL DEMANDED**

13 Plaintiff demands trial of all issues by jury.

14 DATED: August 12, 2020

THE DOMINGUEZ FIRM, LLP

15
16 By: 

Jace H. Kim, Esq.
Carlos A. Peres, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff
Ashtin Sewell-Cherry