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**Amended Complaint Filed -- Amending 1st Amended
COMPLAINT (UNLIMITED) of CARRILLO FELIX**



NEW FILE

LAW OFFICE OF SCOTT E. WHEELER

Scott Ernest Wheeler (SBN 187998)

250 West First Street, Suite 216

Claremont, California 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)

400 Corporate Pointe, Suite 300

Culver City, California 90230

Telephone: (310) 590-4503

Facsimile: (310) 590-4596

Email: awand@wandlawfirm.com

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

FRANCISCO CARRILLO FELIX,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

MATERIAL SUPPLY, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: CIVDS2011692

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Timely Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Statements
8. Violation of the ICRAA
9. Violation of the CCRAA
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class action brought by Francisco Carrillo Felix ("Plaintiff"), on behalf of himself and all other similarly situated individuals, against his former employer Material Supply, Inc. ("Defendant"), in order to hold Defendant accountable for its wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his respective personal knowledge.

1. At all relevant times herein, Defendant has implemented common policies and practices designed to maximize profits at the expense of its non-exempt employees, and which have resulted in systematic violations of California's wage and hour laws.

2. Defendant maximizes profits by, among other common policies and practices, cutting labor costs through understaffing, denying its non-exempt of the opportunity to take meal and rest breaks, cheating its non-exempt employees out of wages and premiums, and related violations of California wage and hour laws.

3. For example, Defendant has implemented unlawful policies with respect to meal periods and rest breaks. Defendant also requires its non-exempt employees to systematically work through meal periods and rest breaks while failing to pay them the legally-required premium pay for these missed and non-complaint meal and rest breaks. Defendant has also implemented an unlawful time rounding practice, which in conjunction with its strict attendance policy, results in the systematic underpayment of wages to Plaintiff and other non-exempt employees.

4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of Defendant during the applicable statute of limitations period to compensate these workers for the wages Defendant has stolen from them.

JURISDICTION AND VENUE

5. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a California citizen and Defendant is a California corporation which maintains offices

1 and conducts substantial business in California. All Class members are also California citizens. No
2 federal question is at issue because Plaintiff's claims are based solely on California law.

3 6. Venue is proper in this judicial district and the County of San Bernardino because
4 Plaintiff and Class members performed work for Defendant in the County of San Bernardino, and
5 Defendant's illegal payroll policies and practices, which are the subject of this action, were
6 applied, at least in part, to Plaintiff and Class members, in the County of San Bernardino.

7 THE PARTIES

8 7. Plaintiff is a resident and citizen of the State of California and a former employee
9 of Defendant. Plaintiff was employed by Defendant in a non-exempt, hourly position based out of
10 Defendant's manufacturing plant located at 11700 Industry Avenue, Fontana, California 92337,
11 from approximately July 2018 to March 2020. Fontana is a city situated in the County of San
12 Bernardino.

13 8. Defendant is a California corporation that has conducted business as a heating and
14 air conditioning distributor in the state of California at all times relevant herein.

15 9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
16 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
17 Upon information and belief, each Defendant designated as a DOE is in some manner highly
18 responsible for the occurrences alleged herein, and Plaintiff's injuries and damages, as alleged
19 herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave
20 of the Court to amend this Complaint to allege the true names and capacities of such DOE
21 defendants when ascertained.

22 10. As a direct and proximate result of the unlawful actions of Defendant, Plaintiff and
23 other non-exempt employees have suffered, and continue to suffer, from loss of earnings in
24 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

25 CLASS ACTION ALLEGATIONS

26 11. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of
27 himself and the following Class:
28

1 All non-exempt employees of Defendant who are California citizens and who worked for
2 Defendant in California during the relevant statute of limitations period.

3 12. Hereinafter, all non-employees that are part of the Class defined in Paragraph 11
4 above are referred to as "Class members."

5 13. Plaintiff reserves the right to name additional Class representatives as may be
6 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
7 proposed Class and/or add subclasses before the Court determines whether certification is
8 appropriate

9 14. This action is appropriately suited for a class action because:

10 A. The proposed Class is a significant number. Plaintiff is informed and believes that
11 the proposed Class consists of at least fifty current and former non-exempt employees, rendering
12 joinder impractical.

13 B. This action involves common questions of law and fact to the proposed Class
14 because the action focuses on the Defendant's systematic course of illegal payroll practices and
15 policies, which was applied to all non-exempt employees in uniform violation of the California
16 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
17 prohibits unfair business practices arising from such violations. Here are a few common questions
18 of law and fact that will drive the resolution of this action:

- 19 1. Whether Defendant failed to provide non-exempt employees with legally
20 compliant meal periods, and whether Defendant properly paid premium pay as
21 a result of missed and non-compliant meal periods;
- 22 2. Whether Defendant failed to provide non-exempt employees with legally
23 compliant rest breaks, and whether Defendant properly paid premium pay as a
24 result of missed and non-compliant rest breaks;
- 25 3. Whether Defendant failed to timely pay wages to non-exempt employees in
26 compliance with California law;
- 27 4. Whether Defendant failed to pay all wages due to discharged or quitting non-
28 exempt employees;

5. Whether Defendant has failed to properly calculate and pay overtime in compliance with California law;
6. Whether Defendant's time rounding practice complies with California law;
7. Whether Defendant failed to maintain required records and accurate wage statements for non-exempt employees;
8. Whether Defendant procured consumer credit reports and background checks of employees in violation of California law; and
9. Whether Defendant engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods

**[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 16-2001, § 11]
(On Behalf of Plaintiff and the Class Against All Defendants)**

15. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 14.

16. During the statute of limitations period, as part of Defendant's unlawful policies and practices to deprive its non-exempt employees of all wages earned and due, Defendant required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class members as required under Cal. Lab. Code §§ 226.7, 512, and § 11 of IWC Wage Order No. 16-2001 and any other applicable IWC Wage Order.

1 17. Defendant has implemented several policies and practices that have caused Plaintiff
2 and Class members to systematically miss and otherwise take non-compliant meal periods.

3 18. Defendant has not properly notified Plaintiff and Class members of their rights
4 under California law to take timely, uninterrupted meal periods and thus, they are left in the dark
5 as to when or for how long they can take their meal periods. Defendant also auto-deducts the meal
6 periods of Plaintiff and Class members and/or otherwise does not keep track of when their meal
7 periods are actually taken.

8 19. In addition, Defendant provided Plaintiff and Class members with so much work to
9 complete during their shifts that they were regularly denied the opportunity to take meal periods.
10 Plaintiff and Class members could not simply abandon their work duties to take a meal period. All
11 job duties had to be completed before taking meal break, which regularly caused Plaintiff and
12 Class members to miss meal periods, to take meal periods after the fifth hour of work, and to take
13 meal periods of less than 30 minutes. Defendant also systematically deprived Plaintiff and Class
14 members of the opportunity to take second meal periods even though they regularly work shifts in
15 excess of 10 hours.

16 20. Defendant further violated Cal. Lab. Code §§ 226.7, § 11 of the applicable IWC
17 Wage Order and any other applicable IWC Wage Order, and the California Unfair Competition
18 Law, Cal. Bus. & Prof. Code § 17200 *et. seq.*, by failing to compensate Plaintiff and Class
19 members who were not authorized and permitted to take a complete, timely, uninterrupted meal
20 period, one additional hour of compensation at the proper regular rate of pay for each workday
21 that such a meal period was not authorized or permitted. Defendant further violated Cal. Lab.
22 Code sections 226.7, 510, 1194, 1197, and § 11 of the applicable IWC Wage Order by failing to
23 compensate Plaintiff and Class members for all hours worked during their meal periods.

24 21. As a proximate result of the aforementioned violations, Plaintiff and Class
25 members have been damaged in an amount according to proof at trial, and seek all wages earned
26 and due, interest, penalties, expenses, and costs of suit.

27
28

SECOND CAUSE OF ACTION**Failure to Provide Required Rest Breaks****[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 16-2001, § 12]*****(On Behalf of Plaintiff and the Class Against All Defendants)***

22. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 21.

23. During the statute of limitations period, as part of Defendant's illegal policies and practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize and permit Plaintiff and Class members to take rest breaks as required under Cal. Lab. Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 16-2001 and any other applicable IWC Wage Order.

24. In California, employers are required to provide a ten (10) minute rest break for every four hours worked or major action thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally-compliant rest break is not provided.

25. Plaintiff and Class members were denied the ability to take their first and/or second rest breaks on a regular basis, as Defendant did not adequately notify them of their rights under California law to take such rest breaks. As with meal periods, Defendant's policies and practices caused Plaintiff and Class members to miss or otherwise take non-compliant rest breaks by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest breaks simply could not be taken. Further, Plaintiff and Class members regularly worked job assignments that prevented them from being able to take rest breaks. Plaintiff and Class members could not take their rest breaks based upon the job assignments provided by Defendant, as they were routinely advised there was work to do and they always had to rush to the next job assignment. In addition, Defendant did not adequately notify Class members of their rights to take rest breaks, and systematically denied them the opportunity to take rest breaks, including all rest breaks required during long shifts, which at times exceeded 10 consecutive hours.

26. Defendant further violated Cal. Lab. Code § 226.7, § 12 of IWC Wage Order No. 16-2001 and any other applicable IWC Wage Order, and the California Unfair Competition Law,

1 Cal. Bus. & Prof. Code § 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were
2 not provided with a rest break, in accordance with the applicable wage order, one additional hour
3 of compensation at the proper regular rate of pay for each workday that a rest break was not
4 provided.

5 27. As a proximate result of the aforementioned violations, Plaintiff and Class
6 members have been damaged in an amount according to proof at trial, and seek all wages earned
7 and due, interest, penalties, expenses, and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Pay Overtime Wages**

10 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 16-2001, § 3]**
11 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

12 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 27.

14 29. Pursuant to Cal. Lab. Code §§ 510, 1194, and § 3 of IWC Wage Order No. 16-2001
15 and any other applicable IWC Wage Order, Defendant is required to compensate Plaintiff and
16 Class members for all overtime, which is calculated at one and one-half (1 ½) times the regular
17 rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per
18 week, and for the first eight (8) hours on the seventh consecutive workday, with double time for
19 all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
20 of eight (8) hours on the seventh consecutive day of work in any.

21 30. During the statute of limitations period, Defendant failed to compensate Plaintiff
22 and Class members for all overtime hours worked by, among other methods, failing to pay
23 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Cal. Lab. Code
24 §§ 510, 1194, and § 3 of IWC Wage Order No. 16-2001 and any other applicable IWC Wage
25 Order, requiring, permitting or suffering Plaintiff and Class members to work off-the-clock, and to
26 work through meal periods and rest breaks, but not compensating them for this time,
27 implementing a one-sided and unlawful time rounding practice, failing to properly calculate the
28 regular rate of pay by including the value of commissions, retroactive pay, bonuses, etc., and other
methods to be discovered.

31. Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff and Class members for all wages earned and all hours worked in violation of Cal. Lab. Code §§ 510, 1194 and 1198 and IWC Wage Order No. 16-2001, § 3.

32. Defendant's conduct described herein violates Cal. Lab. Code §§ 510, 1194, 1198, and § 3 of IWC Wage Order No. 16-2001 and any other applicable IWC Wage Order. Therefore, pursuant to Cal. Lab. Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

Failure to Pay Timely Wages

[Cal. Lab. Code §§ 204, 210]

(On Behalf of Plaintiff and the Class Against All Defendants)

33. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 32.

34. Cal. Lab. Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. Cal. Lab. Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Cal. Lab. Code § 204 further provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

35. During the statute of limitations period, Defendant, among other things, willfully failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited to, meal period and rest break premiums, overtime and regular wages, and payment for work performed off-the-clock, within any time period permissible under Cal. Lab. Code § 204.

36. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil

1 penalties pursuant to Cal. Lab. Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable
2 provisions under the Cal. Lab. Code and IWC Wage Orders, and an award of costs, expenses, and
3 reasonable attorneys' fees.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

6 **[Cal. Lab. Code §§ 201-203]**

7 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

8 37. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 36.

10 38. Pursuant to Cal. Lab. Code §§ 201, 202, and 203, Defendant is required to pay all
11 earned and unpaid wages to an employee who is discharged. California Labor Code § 201
12 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
13 at the time of discharge are due and payable immediately.

14 39. Furthermore, pursuant to Cal. Lab. Code § 202, Defendant is required to pay all
15 accrued wages due to an employee no later than seventy-two (72) hours after the employee quits
16 his or her employment, unless the employee provided seventy-two (72) hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or wages at the time of
18 quitting.

19 40. Cal. Lab. Code § 203 provides that if an employer willfully fails to pay, in
20 accordance with Cal. Lab. Code §§ 201 and 202, any wages of an employee who is discharged or
21 who quits, the employer is liable for waiting time penalties in the form of continued compensation
22 to the employee at the same rate for up to thirty (30) workdays.

23 41. During the statute of limitations period, Defendant has willfully failed to pay
24 accrued wages and other compensation to Plaintiff and Class members in accordance with Cal.
25 Lab. Code §§ 201 and 202. On information and belief, Defendant does not have a sufficient policy
26 to provide Plaintiff and Class members with their final paychecks within the timeframes required
27 under California law. In addition, because Defendant has failed and continues to fail to properly
28 compensate Plaintiff and Class members for all hours worked when due, overtime and regular
wages, has failed to pay wages due to an unlawful time rounding practice, and failed to pay

1 premiums for non-compliant meal periods and rest breaks, Defendant has also willfully failed and
2 continues to fail to pay accrued wages and other compensation to Class members formerly
3 employed by Defendant in accordance with Cal. Lab. Code §§ 201 and 202.

4 42. As a result, Plaintiff and Class members are entitled to all available statutory
5 penalties, including the waiting time penalties provided in Cal. Lab. Code § 203, together with
6 interest thereon, as well as other available remedies.

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Maintain Required Records**

9 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 16-2001, § 7]**

10 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

11 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 42.

13 44. During the statute of limitations period, as part of Defendant's illegal payroll
14 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
15 Defendant knowingly and intentionally failed to maintain records as required under Cal. Lab.
16 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 16-2001, § 7 and any other applicable
17 IWC Wage Order, including but not limited to the following records: total daily hours worked by
18 each employee; applicable rates of pay; all deductions; meal periods; time records showing when
19 each employee begins and ends each work period; and accurate itemized wage statements.

20 45. Among other things, Defendant applied an auto-deduct policy to meal periods of
21 Plaintiff and Class members and/or otherwise failed to keep track when they took their meal
22 periods. Defendant also failed to record the actual work times of Plaintiff and Class members. In
23 addition, Defendant knew it was not providing Plaintiff and Class members with proper meal and
24 rest periods, but knowingly failed to include in the wage statements one (1) extra hour of
25 compensation for each missed meal and rest period. Defendant's wage statements also list the
26 incorrect name of the legal employer, fail to list the total hours worked by the employee, all
27 applicable hourly rates in effect during the pay period, the corresponding number of hours worked
28 at each hourly rate by the employee, the correct rate of pay for purposes of calculating the regular
rate of pay and/or overtime rate of pay, or the correct hours worked and paid.

1 46. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
2 Class members have been damaged in an amount according to proof at trial, and are entitled to all
3 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled
4 to all available penalties, including but not limited to, penalties pursuant to Cal. Lab. Code §§
5 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
6 including but not limited to those provided in California Labor Code § 226(e), as well as other
7 available remedies.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Itemized Wage Statements**
10 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 16-2001, § 7]**
11 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

12 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 46.

14 48. During the statute of limitations period, Defendant has routinely failed to provide
15 Plaintiff and Class members with timely and accurate itemized wage statements. Defendant's pay
16 stubs violate Cal. Lab. Code § 226 by failing to list the correct legal employer. Defendant's pay
17 stubs list "AC PRO" as the legal employer of Plaintiff and Class members, but the actual legal
18 entity employing them is Material Supply, Inc. Further, Defendant's wage statements fail to list
19 the total hours worked by the employee, and all applicable hourly rates in effect during the pay
20 period, the corresponding number of hours worked at each hourly rate by the employee, the
21 correct rate of pay for purposes of calculating the regular rate of pay and/or overtime rate of pay,
22 or the correct hours worked and paid. Defendant simply failed to list the time worked by Plaintiffs
23 and Class members, and the applicable rates of pay, during a significant portion of the statute of
24 limitations time period. Moreover, Defendant has not provided Plaintiff and Class members with
25 proper meal periods and rest breaks but has intentionally failed to include in their wage statements
26 one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal
27 period or rest break.

28 49. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
provide Plaintiff and Class members with timely and accurate itemized wage statements in

1 accordance with Cal. Lab. Code § 226(a), and § 7 of IWC Wage Order No. 16-2001 and any other
2 applicable IWC Wage Order.

3 50. Plaintiff and Class members suffered injury as a result of Defendant's failure to
4 provide timely and accurate itemized wage statements because it prevented them from discovering
5 the scope and extent of Defendant's violations of California wage and hour laws, prevented them
6 from being able to determine the gross wages earned, the total hours worked, all deductions made,
7 the net wages earned, all applicable hourly rates in effect during each pay period and the
8 corresponding number of hours worked at each hourly rate, or even the name of the legal entity
9 that employed them.

10 51. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
11 Class members have been damaged in an amount according to proof at trial, and seek all wages
12 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
13 available penalties, including but not limited to penalties pursuant to Cal. Lab. Code §§ 226(e),
14 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but
15 not limited to those provided in California Labor Code § 226(e), as well as other available
16 remedies.

17 **EIGHTH CAUSE OF ACTION**

18 **Violation of the ICRAA**

19 **[Cal. Civ. Code § 1786 *et seq.*]**

20 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

21 52. Plaintiff incorporates herein by specific reference as though fully set forth the
22 allegations in paragraphs 1 through 51.

23 53. At all times relevant herein, the California Investigative Consumer Reporting
24 Agencies Act ("ICRAA"), Cal. Civ. Code § 1786 *et seq.*, has been in full force and effect.

25 54. During the statute of limitations period, Defendant has procured or causes to be
26 prepared investigative consumer reports on Plaintiff and Class members as a part of the
27 employment application process.

28 55. Defendant has willfully violated Cal. Civ. Code § 1786.16(2)(B) because it fails to
provide Plaintiff and Class members with "clear and conspicuous" notice of the following in a

1 written document that consists solely of the disclosure: (1) that Defendant may procure a
2 consumer background report for employment purposes; (2) the permissible purpose of the report;
3 (3) that the disclosure may include information on the consumer's character, general reputation,
4 personal characteristics, and mode of living; (4) identification of the name, address, and telephone
5 number of the investigative consumer reporting agency conducting the investigation; (5)
6 notification of the nature and scope of the investigation requested, including a summary of the
7 provisions of Cal. Civ. Code § 1786.22.

8 56. Defendant has violated Cal. Civ. Code § 1786.16(2)(B) because it does not provide
9 notice of the foregoing information to Plaintiff and Class members in a document that consists
10 solely of the disclosure, in that it requires Plaintiff and Class members to provide personal
11 information, attest to the veracity of that information, and legally acknowledge that any material
12 misrepresentations or omissions will be grounds for adverse employment action. In addition, the
13 purported disclosure violates Cal. Civ. Code § 1786.16(2)(B) because it fails to provide
14 notification of the nature and scope of the investigation requested, including a summary of the
15 provisions of Cal. Civ. Code § 1786.22.

16 57. Based on these violations, Plaintiff and Class members seek actual damages,
17 punitive damages, and reasonable attorneys' fees and costs, pursuant to Cal. Civ. Code § 1786.50.

18 **NINTH CAUSE OF ACTION**

19 **Violation of the CCRAA**

20 ***(On Behalf of Plaintiff and the Class Against All Defendants)***

21 58. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 57.

23 59. At all times relevant herein, the California Consumer Credit Reporting Agencies
24 Act ("CCRAA"), Cal. Civ. Code § 1785.1 *et seq.*, has been in full force and effect. The CCRAA
25 governs the conduct of persons who use a consumer credit report to take adverse action against
26 "consumers." Pertaining to the use of such reports for employment purposes, Cal. Civ. Code §
1785.20.5 states:

27 (a) Prior to requesting a consumer credit report for employment purposes, the user of the
28 report shall provide written notice to the person involved. The notice shall inform the
person that a report will be used, and shall identify the specific basis under subdivision (a)

1 of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the
2 person of the source of the report, and shall contain a box that the person may check off to
3 receive a copy of the credit report. If the consumer indicates that he or she wishes to
4 receive a copy of the report, the user shall request that a copy be provided to the person
5 when the user requests its copy from the credit reporting agency. The report to the user and
6 to the subject person shall be provided contemporaneously and at no charge to the subject
7 person.

8 (b) Whenever employment involving a consumer is denied either wholly or partly because
9 of information contained in a consumer credit report from a consumer credit reporting
10 agency, the user of the consumer credit report shall so advise the consumer against whom
11 the adverse action has been taken and supply the name and address or addresses of the
12 consumer credit reporting agency making the report. No person shall be held liable for any
13 violation of this section if he or she shows by a preponderance of the evidence that, at the
14 time of the alleged violation, he or she maintained reasonable procedures to assure
15 compliance with this section.

16 60. On information and belief, Defendant had no reasonable procedures in place to
17 assure compliance with Cal. Civ. Code § 1785.20.5.

18 61. Defendant violated the CCRAA by failing to provide written notice to Plaintiff and
19 Class members prior to requesting such consumer credit reports that complied with Cal. Civ. Code
20 § 1785.20.5 by informing them of the specific basis under subdivision (a) of Section 1024.5 of the
21 California Labor Code for use of the reports or informing them of the source of the reports.

22 62. Defendant willfully violated the CCRAA by acting in deliberate or reckless
23 disregard of its obligations and the rights of Plaintiff and Class members.

24 63. Plaintiff and Class members seek the following pursuant to Cal. Civ. Code §
25 1785.31(a)(2)(A): any actual damages; punitive damages of not less than one hundred dollars
26 (\$100) nor more than five thousand dollars (\$5,000) for each violation as the Court deems proper;
27 injunctive relief requiring Defendant to comply with the CCRAA; costs and reasonable attorney's
28 fees; and any other relief that the Court deems proper.

TENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class Against All Defendants)

64. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 63.

1 65. Each and every one of Defendant's acts and omissions in violation of the California
2 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to,
3 Defendant's failure to provide required meal and rest breaks, failure to pay all wages due to
4 discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage
5 statements or to maintain required records, failure to pay proper overtime and regular wages,
6 constitute an unfair and unlawful business practice under California Business and Professions
7 Code § 17200, *et seq.*

8 66. Defendant's violations of California wage and hour laws, and laws relating to the
9 procurement of consumer credit reports and background checks, constitute a business practice
10 because the aforementioned acts and omissions were done repeatedly over a significant period of
11 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

12 67. Defendant has avoided payment of wages, prevailing wages, the provision of meal
13 and rest breaks, and other benefits as required by the California Labor Code, the California Code
14 of Regulations, and the applicable IWC Wage Order. Further, Defendant has failed to record,
15 report, and pay the correct sums of assessment to the state authorities under the California Labor
16 Code and other applicable regulations.

17 68. As a result of these unfair and unlawful business practices, Defendant has reaped
18 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
19 and members of the public. Defendant should be made to disgorge its ill-gotten gains and to
20 restore them to Plaintiff and Class members.

21 69. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
22 members to seek preliminary and permanent injunctive relief, including but not limited to orders
23 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
24 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
25 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
26 time of trial.

ELEVENTH CAUSE OF ACTION
Representative Action for Civil Penalties
[Cal. Lab. Code §§ 2698- 2699.5]
(On Behalf of Plaintiff and the Class Against All Defendants)

70. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 69, with exception of the allegations in Paragraphs 11-14 (A-D).

71. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of Defendant pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

72. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 354, 558, 1174.5, 1197.1, 1199, and IWC Wage Order No. 16-2001, § 18, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226, 226.7, 351, 510, 512, 1174, 1194, 1197 and 1198. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

76. Pursuant to California Labor Code §§ 2699.3, on April 8, 2020, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to Cal. Lab. Code § 226.7 and IWC Wage Order No. 16-2001;
4. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wager Order, and from engaging in the unlawful business practices complained of herein;
5. For waiting time penalties pursuant to Cal. Lab. Code § 203;
6. For statutory and civil penalties according to California law;
7. For an award of punitive damages pursuant to Cal. Civ. Code §§ 1785.31(a)(2)(B) and 1786.50(b);
8. For an award of actual or statutory damages pursuant to Cal. Civ. Code §§ 1786.50(a)(2) and 1785.31 in an amount subject to proof at trial;
9. For interest on the unpaid wages at 10 percent per annum pursuant to Cal. Lab. Code § 218.6, Cal. Civ. Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
10. For reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5, 226, Cal. Civ. Code §§ 1021.5, 1785.31, 1786.50, 2699 and/or any other applicable provisions providing for attorneys' fees and costs;
11. For declaratory relief;
12. For an order certifying the First through Tenth Causes of Action as a class action;
13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel; and

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SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT