

LEBE LAW, APLC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

Zachary Gershman (SBN 328004)

zachary@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 358-7046

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

Attorneys for Plaintiff Julio Ochoa,

Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE COUNTY

JULIO OCHOA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SPEECH AND LANGUAGE
DEVELOPMENT CENTER, INC.; and
Does 1 through 25,

Defendants.

Case No. 30-2020-01143577-CU-OE-CXC

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Timely Pay All Earned Wages;**
- 2. Failure to Pay Minimum Wages;**
- 3. Failure to Pay Overtime Wages;**
- 4. Failure to Provide Meal Periods;**
- 5. Failure to Provide Rest Breaks;**
- 6. Failure to Furnish Accurate and Itemized Wage Statements;**
- 7. Violation of California Business Professions Code §§ 17200, *et seq.*; and**
- 8. PAGA Civil Penalties (Labor Code §§ 2698, *et seq.*)**

Jury Trial Demanded

INTRODUCTION

1. Defendant Speech and Language Development Center, Inc. and Does 1-25 (“Defendants”) operate a special education school based in Buena Park, California. Plaintiff Julio Ochoa (“Plaintiff”) has been employed by Defendants as a Para Professional, sometimes referred to as PARA, and a Bus Aide, an hourly, non-exempt employee since August 2012.

2. Plaintiff brings this class and representative action based on Defendants’ failure to correctly calculate and pay all minimum, regular, overtime, and premium wages.

3. Based on information and belief, Defendants failed to correctly determine the regular rate of pay by failing to include, among other remuneration, all Class Members’ shift differentials, hourly rates, and bonuses, and as a result, did not calculate or pay the correct overtime rate. For example, Plaintiff regularly earned hourly wages at two different rates, but Defendants calculated overtime based only on the lower rate.

4. Based on information and belief, Defendants also failed to pay for all time worked by Class Members by using a policy which paid wages based on rounded time, rather than time actually worked. During the Class Period, Defendants’ rounding policy was not neutral in application and resulted in underpayment of Class Members’ wages.

5. Based on information and belief, Defendants made hundreds of “edits” to hours recorded by Class Members, which reduced the total hours Class Members were paid for.

6. As a result of Defendants’ policies, Class Members have not been paid for all hours worked, including hours worked more than eight per day or 40 per workweek, in violation of Labor Code sections 510, 1194, and 1198, and the applicable IWC Wage Order.

7. Defendants employed Class Members for periods of five hours or more without providing 30-minute meal periods relieved of all duties as required by California Labor Code sections 226.7 and 512, and the IWC Wage Orders. Class Members’ meal breaks were regularly late, interrupted, or less than thirty minutes. Defendants failed to pay Class Members the premium compensation mandated by California Labor Code section 226.7 for these missed meal periods.

8. Defendants employed Class Members for work periods of four hours or major

1 fraction thereof without on-the-clock, uninterrupted rest periods of ten minutes' net rest time
2 and failed to compensate Class Members for these missed rest periods, in violation of Labor
3 Code section 226.7 and the applicable IWC Wage Order.

4 9. Defendants knowingly and intentionally failed to provide Class Members with
5 timely and accurate wage statements in violation of Labor Code section 226 and the applicable
6 IWC Wage Order.

7 10. On information and belief, Plaintiff alleges Defendants applied the same policies
8 described above to all other members of the proposed Class. As alleged below, these uniform
9 policies, practices, and procedures violated California's labor laws and constituted unfair,
10 fraudulent or illegal business practices under Business & Professions Code sections 17200,
11 *et seq.*

12 11. Based on information and belief, Plaintiff alleges that as a result of Defendants'
13 policies, Defendants failed to timely pay their non-exempt employees all wages due and owing
14 during and upon termination of employment.

15 **PARTIES, JURISDICTION, AND VENUE**

16 12. Plaintiff has been employed by Defendants as an hourly, non-exempt employee
17 from approximately August of 2012 until the present.

18 13. Defendant Speech and Language Development Center, Inc. is a corporation
19 organized under the laws of the State of California. Defendant Speech and Language
20 Development Center, Inc. is headquartered in Buena Park, California.

21 14. Plaintiff does not know the true names or capacities of Defendants sued as
22 Does 1 through 25, inclusive, and sues each using fictitious names. Plaintiff is informed and
23 believes, and alleges each fictitious Defendant is responsible in some manner for the injuries
24 complained of. Plaintiff will amend this Complaint to identify such fictitiously-named
25 Defendants pursuant to Code of Civil Procedure section 474 once their identities become
26 known.

27 15. Plaintiff seeks relief in excess of the minimal jurisdictional limits of the
28 Superior Court which will be established according to proof at trial. The Court has personal

jurisdiction over each of the parties because they are either citizens of this State, doing business in this State, or otherwise have minimum contacts with this State.

16. Venue is proper in this Court because, upon information and belief, Plaintiff worked for Defendants in this county, Defendants are headquartered in this county, Defendants transact business in this county, and the acts and omissions alleged took place in this county.

17. Plaintiff is informed and believes and alleges Defendants were at all relevant times members of, engaged in, and acting within the course and scope of, a joint venture, partnership, association, or common enterprise. Plaintiff is informed and believes and, based thereon, alleges that at all relevant times Defendants acted as agents or employees of each other with respect to, the commission of the acts complained of.

CLASS ALLEGATIONS

18. Plaintiff brings this action behalf of himself and Class Members defined below. California Code of Civil Procedure § 382. The Class is comprised of and defined as:

Class

All current and former non-exempt employees who worked for Defendants in the State of California from April 6, 2016 to the date the class is certified.¹

19. Plaintiff also seeks to certify the following Subclass of employees:

Multiple Hourly Rates Subclass

All members of the Class who received multiple base, hourly rates of pay for work performed for Defendants from April 6, 2016 to the date the class is certified.

20. Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, based on investigation, discovery, or theories of liability.

21. There exists a well-defined community of interest among the Class, and the

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 Class is readily ascertainable.

2 22. The members of the Class are so numerous that joinder of all members in a
3 single action would not be feasible or practical, and the amount of individual damages is not
4 large enough to make individual lawsuits by each class member practical or feasible. Plaintiff
5 is informed and believes and based upon such information and belief alleges that there are in
6 excess of 50 members of the Class.

7 23. Plaintiff's claims are typical of the claims of the rest of the Class, and Plaintiff
8 and his counsel will fairly and adequately represent the interests of the Class.

9 24. Common issues of fact and law predominate in this action over any allegedly
10 individual issues. Specifically, the following common questions of fact or law predominate
11 and make this action superior to individual actions:

12 (i) whether Plaintiff and the Class are entitled to damages, penalties, and
13 other relief based on Defendants' use of uniform policies, practices, or procedures which
14 consistently violated California law and caused Plaintiff and the Class injuries;

15 (ii) whether Defendants violated Labor Code sections 204 and 210, and the
16 applicable IWC Wage Order by failing to pay wages for all hours worked;

17 (iii) whether Defendants violated Labor Code sections 1182.12, 1194,
18 1194.2, and 1197, and the applicable IWC Wage Order by failing to pay minimum wage for
19 all hours worked;

20 (iv) whether Defendants violated Labor Code sections 510, 1194, and 1198,
21 and the applicable IWC Wage Order by failing to pay overtime compensation;

22 (v) whether Defendants violated Labor Code sections 226.7 and 512, and
23 the applicable IWC Wage Order by failing to provide meal periods for each five hours worked,
24 and not compensating employees with one hour of pay at the employees' regular rate of
25 compensation for each workday that a meal period was not provided;

26 (vi) whether Defendants violated Labor Code section 226.7 and the
27 applicable IWC Wage Order by failing to provide daily rest periods of ten minutes per four
28 hours or major fraction thereof worked and by failing to compensate employees one hour's

1 wages in lieu of rest periods;

2 (vii) whether Defendants violated Labor Code section 226, and the
3 applicable IWC Wage Order by failing to provide and maintain timely and accurate itemized
4 wage statements; and

5 (viii) whether Defendants' practices constitute unfair, fraudulent, or illegal
6 business practices under Business and Professions Code sections 17200, *et seq.*

7 25. California labor laws under which Plaintiff asserts the following causes of
8 action on behalf of himself and the rest of the Class are broadly remedial in nature. These
9 labor laws serve an important public interest in establishing minimum working conditions and
10 standards in California. They furthermore protect employees from exploitation by employers
11 who may seek to take advantage of their superior economic and bargaining power in setting
12 onerous terms and conditions of employment. The class action mechanism is a particularly
13 efficient and appropriate procedure to redress the injuries alleged. If each employee in the
14 Class was required to file an individual action, Defendants would be able to use their superior
15 financial and legal resources to gain an unfair advantage over each individual Class Member.
16 Moreover, requiring each Class Member to pursue an individual action would also discourage
17 the assertion of meritorious causes of action by employees who would likely be disinclined to
18 file such individual actions due to a justifiable fear of retaliation and damage to their careers
19 and subsequent employment.

20 26. In addition, even if feasible, individual actions by each Class member would
21 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
22 of each Class Member against Defendants, that in turn could establish potentially
23 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
24 individual Class Members that would, as a practical matter, be dispositive of the interests of
25 the other Class Members. Furthermore, the claims of each individual Class Member are not
26 sufficiently large enough to make it economically feasible to bring each Class Member's
27 claims on an individual basis.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY EARNED WAGES**

3 **(Cal. Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

4 27. Plaintiff re-alleges and incorporates by this reference each and every allegation
5 set forth in all previous paragraphs of the Complaint.

6 28. Labor Code section 204 provides that all wages earned by an employee are due
7 and payable twice during each calendar month.

8 29. Defendants failed to timely pay Class Members all of their earned wages as
9 required by Labor Code section 204.

10 30. Class Members have been deprived of their rightfully earned wages as a direct
11 and proximate result of Defendants' failure to pay said compensation. Class Members are
12 entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

13 31. In addition, Class Members are entitled to penalties pursuant to Labor Code
14 section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each
15 Class Member; and (2) for each of Defendants' subsequent violations, or any willful or
16 intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of the
17 amount unlawfully held.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,**
21 **and 1198; Violation of IWC Wage Order)**

22 32. Plaintiff re-alleges and incorporates by this reference each and every allegation
23 set forth in all previous paragraphs of the Complaint.

24 33. Labor Code sections 1194 and 1197 provide that the minimum wage for
25 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment
26 of a lesser wage than the minimum so fixed is unlawful.

27 34. During the relevant time period, Defendants regularly failed to pay at least
28 minimum wage to Class Members for all hours worked pursuant to Labor Code sections 1194

1 and 1197.

2 35. Defendants' failure to pay Class Members the minimum wage as required
3 violates Labor Code sections 1194 and 1197. Pursuant to these sections, Class Members are
4 entitled to recover the unpaid balance of their minimum wage compensation as well as interest,
5 costs and attorney's fees.

6 36. Pursuant to Labor Code section 1194.2, Class Members are entitled to recover
7 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Cal. Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order)**

11 37. Plaintiff re-alleges and incorporates by this reference each and every allegation
12 set forth in all previous paragraphs of the Complaint.

13 38. Labor Code section 1198 and the applicable IWC Wage Order provide that it
14 is unlawful to employ persons without compensating them at a rate of pay either one and one-
15 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
16 or days worked by the person on a daily or weekly basis.

17 39. Specifically, the applicable IWC Wage Orders provide that Defendants are and
18 were required to pay overtime compensation to Class Members at the rate of one and one-half
19 times (1½) their regular rate of pay when working and for all hours worked in excess of eight
20 (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours
21 of work on the seventh day of work in a workweek.

22 40. The applicable IWC Wage Orders further provide that Defendants are and
23 were required to pay overtime compensation to Class Members at a rate of two times their
24 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in
25 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

26 41. Labor Code section 510 codifies the right to overtime compensation at one and
27 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours per
28 day or forty (40) hours per week and for the first eight (8) hours worked on the seventh

1 consecutive day of work, and at twice the regular hourly rate for hours in excess of twelve
2 (12) hour in a day, or eight (8) hours in on the seventh day of work in a workweek.

3 42. Labor Code section 510 and the applicable IWC Wage Orders provide that
4 employment of more than six days in a workweek is only permissible if the employer pays
5 proper overtime compensation as set forth.

6 43. Class Members were non-exempt employees entitled to the protections of
7 California Labor Code sections 510 and 1194.

8 44. During the relevant time period, Defendants failed to pay Class Members
9 overtime wages for all overtime hours worked when Class Members worked in excess of eight
10 (8) hours in a day, forty (40) hours in a week, and/or for a seventh consecutive day of work
11 in a workweek, or when Class Members worked in excess of twelve (12) hours in a day and/or
12 in excess of eight (8) hours on the seventh day of work in a work week.

13 45. In violation of state law, Defendants knowingly and willfully refused to
14 compensate Class Members for all wages earned and all hours worked.

15 46. Defendants' failure to pay Class Members the unpaid balance of overtime and
16 double time compensation, as required by California law, violates the provisions of Labor
17 Code sections 510 and 1198, and is therefore unlawful.

18 47. Pursuant to Labor Code section 1194, Class Members are entitled to recover
19 unpaid overtime and double time compensation, and interest, costs, and attorneys' fees.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL BREAKS**

22 **(Cal. Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

23 48. Plaintiff re-alleges and incorporates by this reference each and every allegation
24 set forth in all previous paragraphs of the Complaint.

25 49. Labor Code section 226.7 provides that no employer shall require an employee
26 to work during any meal period mandated by the IWC Wage Orders.

27 50. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
28 employ any person for a work period of more than five (5) hours without a meal period of not

1 less than 30 minutes, except that when a work period of not more than six (6) hours will
2 complete the day's work the meal period may be waived by mutual consent of the employer
3 and the employee."

4 51. Labor Code section 512(a) provides that an employer may not require, cause,
5 or permit an employee to work for a period of more than five (5) hours per day without
6 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
7 except that if the total work period per day of the employee is not more than six (6) hours, the
8 meal period may be waived by mutual consent of the employer and the employee.

9 52. Labor Code section 512(a) provides that an employer may not employ an
10 employee for a work period of more than ten (10) hours per day without providing the
11 employee with a second meal period of not less than thirty (30) minutes, except that if the
12 total hours worked is no more than twelve (12) hours, the second meal period may be waived
13 by mutual consent of the employer and the employee only if the first meal period was not
14 waived.

15 53. During the relevant time period, Class Members did not receive compliant
16 meal periods for working more than five (5) and/or ten (10) hours per day because their meal
17 periods were missed, late, short, or interrupted.

18 54. Labor Code section 226.7(b) and Section 11 of the applicable IWC Wage
19 Order requires an employer to pay an employee one (1) additional hour of pay at the
20 employee's regular rate of compensation for each workday that a compliant meal period is
21 not provided.

22 55. At all relevant times, Defendants failed to pay Class Members meal period
23 premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
24 section 226.7(b) and Section 11 of the applicable IWC Wage Order.

25 56. As a result of Defendants' failure to pay Class Members an additional hour of
26 pay for each day a compliant meal period was not provided, Class Members suffered and
27 continue to suffer a loss of wages and compensation.

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 **(Cal. Labor Code § 226.7; Violation of IWC Wage Order)**

4 57. Plaintiff re-alleges and incorporates by this reference each and every allegation
5 set forth in all previous paragraphs of the Complaint.

6 58. Labor Code section 226.7(a) provides that no employer shall require an
7 employee to work during any rest period mandated by the IWC Wage Orders.

8 59. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be
10 in the middle of each work period” and the “authorized rest period time shall be based on the
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

13 60. A rest period mandated by state law or IWC Wage Order “shall be counted as
14 hours worked, for which there shall be no deduction from wages.” Labor Code § 226.7(d).

15 61. During the relevant time period, Class Members did not receive a ten (10)-
16 minute net rest period for every four (4) hours or major fraction thereof worked because they
17 were required to work through daily rest periods or were not authorized to take rest periods.

18 62. Labor Code section 226.7(b) and Section 12 of the applicable IWC Wage
19 Order requires an employer to pay an employee one additional hour of pay at the employee’s
20 regular rate of compensation for each workday that the rest period is not provided.

21 63. At all relevant times, Defendants failed to pay Class Members the full rest
22 period premium for missed or interrupted rest periods pursuant to Labor Code section 226.7(b)
23 and Section 12 of the applicable IWC Wage Order.

24 64. As a result of Defendants’ failure to pay Class Members an additional hour of
25 pay for each day a rest period was not provided, Class Members suffered and continue to
26 suffer a loss of wages and compensation.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(Cal. Labor Code § 226; Violation of IWC Wage Order)**

4 65. Plaintiff re-alleges and incorporates by this reference each and every allegation
5 set forth in all previous paragraphs of the Complaint.

6 66. California Labor Code section 226(a) requires employers to furnish their
7 employees with an accurate itemized writing showing gross wages earned, total hours worked,
8 all deductions, net wages earned, inclusive dates of the period for which the employee is paid,
9 the name of the employee and the portion of his or her social security number required by law,
10 the name and address of the legal entity that is the employer, all applicable hourly rates, and
11 the corresponding number of hours worked at each hourly rate by the employee.

12 67. In addition, pursuant to Labor Code section 226.2(a)(2), the itemized
13 statements of employees paid on a piece-rate basis shall also state (1) the total hours of
14 compensable rest and recovery periods, the rate of compensation, and the gross wages paid
15 for those periods during the pay period; and (2) the total hours of other nonproductive time,
16 the rate of compensation, and the gross wages paid for that time during the pay period.

17 68. Defendants have intentionally and willfully failed to provide Class Members
18 with complete and accurate wage statements. The deficiencies include, among other things,
19 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable
20 hourly rates in effect during the pay period.

21 69. As a result of Defendants' violation of California Labor Code section 226(a),
22 Class Members have suffered injury and damage to their statutorily protected rights.
23 Specifically, Class Members have been injured by Defendants' intentional violation of
24 California Labor Code section 226(a) because they were denied both their legal right to
25 receive, and their protected interest in receiving, accurate itemized wage statements under
26 Section 226(a). Because Defendants failed to provide the accurate rates of pay on wage
27 statements, Defendants prevented Class Members from determining if all hours worked were
28 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this

1 lawsuit to analyze whether Plaintiff was paid correctly and the extent of the underpayment,
2 which caused Plaintiff to incur time and expenses. Plaintiff would not have had to engage in
3 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has
4 also delayed Plaintiff's ability to demand and recover the underpayment of wages from
5 Defendants.

6 70. California Labor Code section 226(a) requires an employer to pay the greater
7 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation
8 occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent
9 pay periods, plus attorney's fees and costs, to each employee who was injured by the
10 employer's failure to comply with California Labor Code section 226(a).

11 71. Defendants' violations of California Labor Code section 226(a) prevented
12 Class Members from knowing, understanding, and disputing the wages paid to them, and
13 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
14 knowing and intentional failure to comply with California Labor Code section 226(a), Class
15 Members have suffered an injury, the exact amount of damages and/or penalties is all in an
16 amount to be shown according to proof at trial.

17 72. Class Members are also entitled to injunctive relief under California Labor
18 Code section 226(g), compelling Defendants to comply with California Labor Code section
19 226 and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive
20 relief.

21 **SEVENTH CAUSE OF ACTION**

22 **VIOLATION OF CALIFORNIA BUSINESS PROFESSIONS**

23 **CODE §§ 17200, ET SEQ.**

24 73. Plaintiff re-alleges and incorporates by this reference each and every allegation
25 set forth in all previous paragraphs of the Complaint.

26 74. Business and Professions Code sections 17200, *et seq.*, prohibits acts of unfair
27 competition, which includes any "unlawful, unfair or fraudulent business act or practice . . ."

28 75. A violation of California Business and Professions Code sections 17200, *et*

1 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
2 Defendants' policies and practices have violated state law causing Class Members to suffer
3 and continue to suffer injuries in fact. As alleged, Defendants systematically engaged in
4 unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as
5 failing to pay minimum and overtime wages, failing to timely pay all earned wages, failing to
6 authorize or permit paid rest breaks, failing to provide meal periods, and failing to furnish
7 accurate wage statements, all in order to decrease their costs of doing business and increase
8 their profits.

9 76. At all times relevant, Defendants intentionally avoided paying Class Members
10 wages and monies, creating for Defendants an artificially lower cost of doing business in order
11 to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

12 77. At the time Class Members were hired, Defendants knowingly, intentionally,
13 and wrongfully misrepresented to each of them their conformance with the California Labor
14 Code and IWC Wage Orders including proper payments required by law.

15 78. At all relevant times, Defendants held themselves out to Class Members as
16 being knowledgeable concerning the labor laws of California.

17 79. At all times relevant, Class Members relied on and believed Defendants'
18 representations concerning their conformance with California's wage and hour laws all to their
19 detriment.

20 80. As a result of Defendants' intentional, willful, purposeful and wrongful
21 misrepresentation of their conformance with the California Labor Code and IWC Wage
22 Orders, Class Members suffered a loss of wages and monies, all in an amount to be shown
23 according to proof at trial. By violating the foregoing statutes and regulations as alleged,
24 Defendants' acts constitute unfair and unlawful business practices under California Business
25 and Professions Code sections 17200, *et seq.*

26 81. Defendants' violations of the California Labor Code and IWC Wage Orders
27 and their scheme to lower their payroll costs as alleged, constitute unlawful business practices
28 because they were done in a systematic manner over a period of time to the detriment of the

1 Class Members.

2 82. As a result of the unfair business practices of Defendants, as alleged, Class
3 Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be
4 shown according to proof at trial.

5 83. Plaintiff and Class Members seek to enforce important rights affecting the
6 public interest within the meaning of California Code of Civil Procedure section 1021.5.
7 Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful and harmful
8 to Class members and to the general public. Based on Defendants' conduct as alleged, Plaintiff
9 and Class Members are entitled to an award of attorneys' fees pursuant to California Code of
10 Civil Procedure section 1021.5.

11 **EIGHTH CAUSE OF ACTION**

12 **ENFORCEMENT OF LABOR CODE §§ 2698, *ET SEQ.* ("PAGA")**

13 84. Plaintiff re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth.

15 85. Plaintiff gave notice of these claims to the California Labor and Workforce
16 Development Agency ("LWDA") on May 13, 2020. There was no LWDA intervention within
17 65 days of that notice, and no notice of cure by Defendants. Plaintiff is an aggrieved employee
18 with standing to bring a representative action on behalf of the State, and LWDA and as a
19 private attorney general. Labor Code § 2699.3.

20 86. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
21 provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
23 agencies or employees for violation of the code may, as an alternative, be recovered through
24 a civil action brought by an aggrieved employee on behalf of himself and other current or
25 former employees pursuant to the procedures specified in Labor Code section 2699.3.

26 87. Defendants' conduct violates numerous Labor Code sections including, but not
27 limited to, the following:

28 (a) Violation of Labor Code sections 201, 202, 203, 204, 510, 558, 1194,

1 1197, 1997.1, and 1198 for failure to timely pay all earned wages (including minimum wages
2 and overtime wages) owed to Plaintiff and other aggrieved employees during employment
3 and upon separation of employment as herein alleged;

4 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide
5 meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages
6 for missed meal periods as herein alleged;

7 (c) Violation of Labor Code section 226.7 for failure to permit rest breaks
8 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest
9 periods as herein alleged;

10 (d) Violation of Labor Code section 226 for failure to provide accurate
11 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and

12 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to
13 maintain accurate records.

14 88. Plaintiff is an “aggrieved employee” because he was employed by the alleged
15 violator and had one or more of the alleged violations committed against them, and therefore
16 is properly suited to represent the interests of all other aggrieved employees.

17 89. Plaintiff has exhausted the procedural requirements under Labor Code section
18 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
19 himself and all other aggrieved employees under the Private Attorneys General Act
20 (“PAGA”), Labor code sections 2698, *et seq.*

21 90. The PAGA imposes a penalty of one hundred dollars (\$100.00) for each
22 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00)
23 for each aggrieved employee per pay period for each subsequent violation.

24 91. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is
25 entitled to recover civil penalties, in addition to other remedies, for violations of the Labor
26 Code sections cited above.

27 92. For bringing this action, Plaintiff is entitled to attorney’s fees and costs
28 incurred herein.

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment on behalf of himself and the Class against
3 all Defendants, as follows:

4 **ON THE FIRST CAUSE OF ACTION**

- 5 1. For all unpaid earned wages;
6 2. For all actual, consequential, and incidental losses and damages, according to
7 proof;
8 3. For liquidated damages pursuant to Labor Code section 1194(a);
9 4. For prejudgment interest; and
10 5. For reasonable attorneys' fees and costs under Labor Code section 218.5.

11 **ON THE SECOND CAUSE OF ACTION**

- 12 1. For all unpaid wages;
13 2. For liquidated damages pursuant to Labor Code section 1194(a);
14 3. For prejudgment interest; and
15 4. For reasonable attorneys' fees and costs.

16 **ON THE THIRD CAUSE OF ACTION**

- 17 1. For unpaid overtime wages;
18 2. For prejudgment interest; and
19 3. For reasonable attorneys' fees and costs under Labor Code section 1194.

20 **ON THE FOURTH CAUSE OF ACTION**

- 21 4. For unpaid wage premiums for failing to provide compliant meal periods and
22 penalties;
23 5. For prejudgment interest; and
24 6. For reasonable attorneys' fees and costs under Labor Code section 218.5.

25 **ON THE FIFTH CAUSE OF ACTION**

- 26 1. For unpaid wage premiums for failing to provide compliant rest periods and
27 penalties;
28 2. For prejudgment interest; and

3. For reasonable attorneys' fees and costs under Labor Code section 218.5.

ON THE SIXTH CAUSE OF ACTION

1. For the greater of actual damages or penalties under Labor Code section 226(e);

2. For injunctive relief to ensure Defendants' compliance with Labor Code section 226;

3. For reasonable attorneys' fees under Labor Code section 226(e).

ON THE SEVENTH CAUSE OF ACTION

1. For restitution of all unpaid wages, overtime and other monies withheld from Class Members as a result of Defendants' unfair, unlawful or fraudulent business practices; and

2. For reasonable attorneys' fees and costs under Code of Civil Procedure section 1021.5.

ON THE EIGHTH CAUSE OF ACTION

1. Civil penalties pursuant to Labor Code section 558:

a. \$50 for each underpaid employee for each pay period per violation; and

b. \$100 per employee per pay period for subsequent violations per violation; and

2. Civil penalties pursuant to Labor Code section 2699(f):

a. \$100 for each aggrieved employee per pay period for the initial violation per violation; and

b. \$200 for each aggrieved employee per pay period for each subsequent violation per violation; and

3. For other penalties under the PAGA as allowed as the court may deem appropriate; and

4. Attorneys' fees and costs litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5.

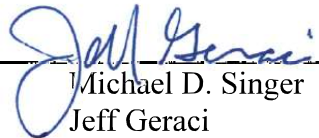
///

ON ALL CAUSES OF ACTION

1. For certification of the action as a class action;
2. For attorneys appearing on the above caption to be named class counsel and for named Plaintiff to be appointed class representative;
3. A declaratory judgment that the practices complained of in this Complaint are unlawful under California Law;
4. For reasonable attorneys' fees under the California Labor Code and all related statutes, including California Code of Civil Procedure section 1021;
5. An injunction against Defendants, their officers, agents, successors, employees, representatives, and any and all persons acting in concert with it from engaging in each of the practices complained of in this Complaint;
6. For costs of the suit incurred;
7. For civil penalties as described above pursuant to the PAGA, 75% of which will be paid to the Labor Workforce Development Agency and 25% of which will be distributed to the aggrieved employees;
8. For pre-and post-judgment interest at the prevailing statutory rates; and
9. For such further relief as the Court may deem appropriate.

Dated: July 20, 2020

LEBE LAW, APLC
COHELAN KHOURY & SINGER

By: _____
Michael D. Singer
Jeff Geraci

Attorney for Plaintiff Julio Ochoa, individually and on behalf of all others similarly situated

///

///

///

///

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

Dated: July 20, 2020

By: _____

Michael D. Singer
Jeff Geraci

19