

AEGIS LAW FIRM, PC
SAMUEL A. WONG (State Bar No. 217104)
KASHIF HAQUE (State Bar No. 218672)
JESSICA L. CAMPBELL (State Bar No. 280626)
9811 Irvine Center Drive, Suite 100
Irvine, California 92618-2902
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: Jcampbell@aegislawfirm.com

Attorneys for Plaintiffs Lorenzo Rodriguez,
Reyna Hernandez, and Cruz Antonio Rodriguez,
individually, and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

LORENZO RODRIGUEZ, REYNA
HERNANDEZ, and CRUZ ANTONIO
RODRIGUEZ, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

EC DISTRIBUTION SERVICES, INC.;
and DOES 1-10, inclusive,

Defendants.

Case No.: 30-2020-01140824-CU-OE-CXC

Assigned for All Purposes to:
Hon. Judge Randall J. Sherman
Dept.: CX105

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Paid Rest Breaks;
5. Failure to Pay All Wages to Piece-Rate Workers for Time Spent in Rest Breaks
6. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Reimburse Necessary Business Expenses;
9. Violation of California Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”).

1 Plaintiffs Lorenzo Rodriguez, Reyna Hernandez, and Cruz Antonio Rodriguez, individually
2 and on behalf of all others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Lorenzo Rodriguez, Reyna Hernandez, and Cruz Antonio Rodriguez
5 (“Plaintiffs”) bring this putative class and representative action pursuant to the Private Attorneys
6 General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against EC Distribution Services, Inc. and Does
7 1 through 10, inclusive (collectively “Defendants”) on behalf of themselves individually and on
8 behalf of Defendants’ non-exempt employees who were misclassified as independent contractors.

9 2. Defendants are in the business of providing newspaper compilation and distribution
10 services throughout California.

11 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”), all
13 of which contribute to Defendants’ deliberate unfair competition.

14 4. Plaintiffs are informed and believe, and thereon allege, during the relevant time
15 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
16 things:

- 17 (a) Misclassifying Plaintiffs and other newspaper compilation and distribution
18 workers as independent contractors;
- 19 (b) Failing to pay all wages for all hours worked, including minimum and
20 overtime wages;
- 21 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
22 thereof;
- 23 (d) Failing to provide meal periods or compensation in lieu thereof;
- 24 (e) Failing to pay wages to piece-rate workers for time spent in rest breaks and/or
25 recovery periods;
- 26 (f) Willfully failing to provide accurate semi-monthly itemized wage statements;
- 27 (g) Failing to pay all wages due upon separation of employment; and
28

(h) Failing to reimburse all business expenses incurred by class members in direct consequence of the discharge of his or her duties.

5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf of themselves and all others similarly to recover, among other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 2698, *et seq.*

6. Plaintiffs, on behalf of themselves and all class members, pursuant to Business and Professions Code sections 17200, *et seq.*, also seek injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint

JURISDICTION AND VENUE

7. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants transact business or have at least one facility in this county and acts and omissions alleged herein took place in this county.

THE PARTIES

11. Plaintiffs Lorenzo Rodriguez, Reyna Hernandez, and Cruz Antonio Rodriguez. are citizens of California. Plaintiffs were employed by Defendants during the Class Period in California.

12. Defendants were and are, upon information and belief, a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names under California Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employers and/or joint employers of Plaintiffs and the class members.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of themselves and all other members of the general public similarly situated who were affected by Defendants’ Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

16. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

17. Plaintiffs’ proposed Class consists of and is defined as follows:

Class

All California citizens who performed work for Defendants in the State of California as newspaper compilation and distribution workers, who were misclassified as independent contractors from April 6, 2016¹ to the date of class certification.

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

18. Plaintiffs also seek to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their working relationship from Defendants from April 6, 2017 to the date the Subclass is certified.

19. Members of the Class and Subclass described above will collectively be referred to as “class members.” Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

20. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants misclassified Plaintiffs and class members as independent contractors rather than non-exempt employees;
- b. Whether Defendants failed to pay at least minimum wage for all hours worked by Plaintiffs and class members;
- c. Whether Defendants failed to pay overtime wages earned by Plaintiffs and class members;
- d. Whether Defendants failed to provide Plaintiffs and class members with meal periods;
- e. Whether Defendants deprived Plaintiffs and class members of paid rest breaks or required Plaintiffs and class members to work through rest breaks without compensation;
- f. Whether Defendants failed to pay all wages to Plaintiffs and class members for time spent in rest breaks;
- g. Whether Defendants failed to timely pay Plaintiffs and class members all earned wages during their employment;
- h. Whether Defendants failed to timely pay Plaintiffs and former class members all wages due upon termination or within 72 hours of resignation;

- i. Whether Defendants failed to furnish Plaintiffs and class members with accurate itemized wage statements;
- j. Whether Defendants required Plaintiffs and class members to use their personal cellular devices to for work-related purposes, without paying a reasonable percentage of their cell phone bills;
- k. Whether Defendants required Plaintiffs and class members to use their personal funds for business expenses and then failed to adequately reimburse them;
- l. Whether Defendants' conduct was willful or reckless; and
- m. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- (a) Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiffs at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- (c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent and protect the interests of all members of the Class because it is in their best interest to prosecute the claims alleged herein to obtain full compensation and

1 penalties due him and the Class. Plaintiffs' attorneys, as proposed class
2 counsel, are competent and experienced in litigating large employment class
3 actions and are versed in the rules governing class action discovery,
4 certification and settlement. Plaintiffs have incurred and, throughout the
5 duration of this action, will continue to incur attorneys' fees and costs that
6 have been and will be necessarily expended for the prosecution of this action
7 for the substantial benefit of each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve economies
10 of time, effort and expense as compared with separate lawsuits, and will avoid
11 inconsistent outcomes because the same issues can be adjudicated in the same
12 manner and at the same time for each Class. If appropriate this Court can, and
13 is empowered to, fashion methods to efficiently manage this case as a class
14 and/or collective action.

15 (e) Public Policy Considerations: Employers in the State of California and other
16 states violate employment and labor laws every day. Current employees are
17 often afraid to assert their rights out of fear of direct or indirect retaliation.
18 Former employees are fearful of bringing actions because they believe their
19 former employers might damage their future endeavors through negative
20 references and/or other means. Class actions provide the class members who
21 are not named in the complaint with a type of anonymity that allows for the
22 vindication of their rights at the same time as affording them privacy
23 protections.

24 **GENERAL ALLEGATIONS**

25 22. Plaintiffs performed services for Defendants at their newspaper distribution center(s)
26 during the relevant time period. During the relevant time period, Plaintiffs were classified by
27 Defendants as independent contractors.
28

1 23. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
2 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
3 knowledgeable about California wage and hour law, employment and personnel practices and the
4 requirements of California.

5 24. Through this action, Plaintiffs allege that Defendants have engaged in a systematic
6 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of
7 which contribute to Defendants' deliberate unfair competition.

8 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to receive wages for all time
10 worked (including minimum and overtime wages) and that they were not receiving all wages earned
11 for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders,
12 Plaintiffs and class members were not paid wages (including minimum and overtime wages) for all
13 hours worked when Defendants failed to pay or underpaid Plaintiffs and class members for all hours
14 worked, and failed to pay for time spent in rest breaks, among other things.

15 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
17 payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when
18 a rest break was missed, and were entitled to payment of wages for time spent when rest breaks were
19 taken. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and class members did not
20 receive paid rest breaks or payment of one (1) additional hour of pay at Plaintiffs and class members'
21 regular rate of pay when a rest break was missed.

22 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to receive all meal periods or
24 payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when
25 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
26 Wage Orders, Plaintiffs and class members did not receive all meal periods or payment of one (1)
27 additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not receive
28 a timely, uninterrupted meal period.

1 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known they had a duty to separately compensate Plaintiffs and class members who were
3 piece-rate workers for time spent during rest breaks, when rest breaks were taken. In violation of the
4 Labor Code, Defendants did not pay piece-rate workers for time spent during rest breaks, when rest
5 breaks were taken.

6 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and class members were entitled to timely payment of wages
8 during their employment. In violation of the California Labor Code, Plaintiffs and class members
9 did not receive payment of all wages within permissible time periods.

10 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and Waiting Time class members were entitled to timely payment
12 of wages upon separation of employment. In violation of the California Labor Code, Plaintiffs and
13 Waiting Time class members did not receive payment of all wages including, but not limited to,
14 unpaid wages within permissible time periods.

15 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive complete and accurate
17 wage statements in accordance with California law. In violation of the California Labor Code,
18 Plaintiffs and class members were not furnished with complete and accurate wage statements
19 showing their total hours worked, number of hours or pieces worked at each hourly or piece rate, and
20 gross and net wages, among other things.

21 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and class members were entitled to reimbursement for necessary
23 expenditures incurred in connection with the performance and execution of their job duties. In
24 violation of the California Labor Code, Plaintiffs and class members did not receive adequate
25 reimbursement for necessary business expenses, including but not limited to reimbursement for
26 purchase of supplies.

27 33. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
28 herein, Defendants knew or should have known that it had a duty to compensate Plaintiffs and class

1 members, and that Defendants had the financial ability to pay such compensation but willfully,
2 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

3 34. Therefore, Plaintiffs bring this lawsuit seeking monetary and injunctive relief against
4 Defendants on behalf of themselves and all class members to recover, among other things, unpaid
5 wages, interest, attorneys' fees, penalties, reimbursements, costs and expenses.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; IWC Wage Order)**

9 35. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
10 though fully set forth herein.

11 36. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
12 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
13 the minimum so fixed is unlawful.

14 37. During the relevant time period, failed to pay Plaintiffs and class members all
15 minimum wages owed when Defendants did not pay for all hours worked, and did not pay for time
16 spent in rest breaks, among other reasons. Plaintiffs and class members were not being paid at least
17 minimum wage for their work.

18 38. During the relevant time period, Defendants regularly failed to pay at least minimum
19 wage to Plaintiffs and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

20 39. Defendants' failure to pay Plaintiffs and class members the minimum wage as
21 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
22 members are entitled to recover the unpaid balance of their minimum wage compensation as well as
23 interest, costs and attorney's fees.

24 40. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to recover
25 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PAY OVERTIME**

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

1 41. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
2 though fully set forth herein.

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

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

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

16 45. California Labor Code § 510 codifies the right to overtime compensation at one and
17 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day
18 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
19 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess
20 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in
21 a workweek.

22 46. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
23 of more than six days in a workweek is only permissible if the employer pays proper overtime
24 compensation as set forth herein.

25 47. Plaintiffs and Class Members were non-exempt employees entitled to the
26 protections of California Labor Code §§ 510 and 1194.

27 48. During the relevant time period, Defendants failed to pay Plaintiffs and Class
28 Members overtime wages for all overtime hours worked when Plaintiffs and Class Members

1 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
2 consecutive day of work in a workweek, or when Plaintiffs and Class Members worked in excess
3 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a
4 work week.

5 49. In violation of state law, Defendants knowingly and willfully refused to perform
6 their obligations and compensate Plaintiffs and Class Members for all wages earned and all hours
7 worked.

8 50. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
9 overtime and double time compensation, as required by California law, violates the provisions of
10 Labor Code §§ 510 and 1198, and is therefore unlawful.

11 51. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
12 recover their unpaid overtime and double time compensation as well as interest, costs, and
13 attorneys' fees

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

17 52. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein

19 53. Labor Code § 226.7 provides that no employer shall require an employee to work
20 during any meal period mandated by the IWC Wage Orders.

21 54. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall employ
22 any person for a work period of more than five (5) hours without a meal period of not less than 30
23 minutes, except that when a work period of not more than six (6) hours will complete the day's
24 work the meal period may be waived by mutual consent of the employer and the employee."

25 55. Labor Code § 512(a) provides that an employer may not require, cause, or permit
26 an employee to work for a period of more than five (5) hours per day without providing the
27 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
28

1 total work period per day of the employee is not more than six (6) hours, the meal period may be
2 waived by mutual consent of both the employer and the employee.

3 56. Labor Code § 512(a) also provides that an employer may not employ an employee
4 for a work period of more than ten (10) hours per day without providing the employee with a second
5 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
6 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
7 and the employee only if the first meal period was not waived.

8 57. During the relevant time period, Plaintiffs and Class Members did not receive
9 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
10 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
11 meal period.

12 58. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
13 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
14 compensation for each work day that a compliant meal period is not provided.

15 59. At all relevant times, Defendants failed to pay Plaintiffs and Class Members meal
16 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §
17 226.7(b) and section 11 of the applicable IWC Wage Order.

18 As a result of Defendants' failure to pay Plaintiffs and Class Members an additional hour of pay for
19 each day a compliant meal period was not provided, Plaintiffs and Class Members suffered and
20 continue to suffer a loss of wages and compensation

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PERMIT REST BREAKS**

23 **(Violation of Labor Code § 226.7; Violation of IWC Wage Order)**

24 60. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
25 though fully set forth herein.

26 61. Labor Code § 226.7(a) provides that no employer shall require an employee to work
27 during any rest period mandated by the IWC Wage Orders.
28

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

63. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

64. During the relevant time period, Plaintiffs and class members did not receive a ten (10) minute net rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

65. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

66. At all relevant times, Defendants failed to pay Plaintiffs and class members the full rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

67. As a result of Defendants’ failure to pay Plaintiffs and class members an additional hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS

(Violation of Labor Code § 226.2; Violation of IWC Wage Order)

68. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

69. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

70. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no less than the higher of (a) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(b) The applicable minimum wage.

71. During the relevant time period, Plaintiffs and Class Members paid on a piece-rate basis were not compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

72. At all relevant times, Defendants knowingly and intentionally failed to comply with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-rate basis.

73. As a result of Defendants' failure to pay Plaintiffs and Class Members compensated rest and recovery periods, Plaintiffs and Class Members suffered and continue to suffer a loss of wages and compensation.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION

OF EMPLOYMENT AND WITHIN THE REQUIRED TIME

(Violations of Labor Code §§ 201, 202, 203, and 210; Violation of IWC Wage Order)

74. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

75. California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

76. During the relevant time period, Defendants willfully failed to pay Plaintiffs and Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

77. Defendants' failure to pay Plaintiffs and Waiting Time Subclass Members all their earned wages at the time or discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

78. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

79. Defendants willfully failed to pay Plaintiffs and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiffs and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

80. Based on these violations, Plaintiffs and the Waiting Time Subclass they seek to represent request relief as described herein and below.

SEVENTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

81. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as though fully set forth herein.

82. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, the name and

1 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 83. In addition, pursuant to Labor Code § 226.2(a)(2), the itemized statements of
4 employees paid on a piece-rate basis shall also state (1) the total hours of compensable rest and
5 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
6 pay period; and (2) the total hours of other nonproductive time, the rate of compensation, and the
7 gross wages paid for that time during the pay period.

8 84. Defendants have intentionally and willfully failed to provide Plaintiffs and class
9 members with complete and accurate wage statements. The deficiencies include, among other things,
10 the failure to list the gross wages earned, net wages earned, hours worked, and all applicable hourly
11 rates in effect during the pay period.

12 85. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and
13 class members have suffered injury and damage to their statutorily protected rights. Specifically,
14 Plaintiffs and class members have been injured by Defendants' intentional violation of California
15 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
16 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
17 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
18 Defendants have prevented Plaintiffs and class members from determining if all hours worked were
19 paid at the appropriate rate and the extent of the underpayment. Plaintiffs have had to file this lawsuit
20 in order to analyze whether in fact Plaintiffs were paid correctly and the extent of the underpayment,
21 thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in
22 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
23 delayed Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.

24 86. California Labor Code § 226(a) requires an employer to pay the greater of all actual
25 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
26 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
27 fees and costs, to each employee who was injured by the employer's failure to comply with California
28 Labor Code § 226(a).

87. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and class members from knowing, understanding and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

88. Plaintiffs and class members are also entitled to injunctive relief under California Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)

89. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

90. Labor Code § 2800 states that an employer shall in all cases indemnify its employee for losses.

91. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

92. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

93. During the relevant time period, Defendants required Plaintiffs and class members to buy supplies or pay for other business expenses, without properly compensating them.

94. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiffs and class members for these expenses.

95. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and class members for necessary business-related costs

1 and expenses. As a direct result, Plaintiffs and class members have suffered and continue to suffer
2 substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and
3 attorney's fees.

4 **NINTH CAUSE OF ACTION**

5 **UNFAIR BUSINESS PRACTICES**

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

7 96. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs, as
8 though fully set forth herein.

9 97. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
10 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

11 98. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
12 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
13 practices have violated state law causing Plaintiffs and class members to suffer and continue to suffer
14 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
15 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum
16 wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to pay
17 wages for time spent in rest breaks and/or recovery periods, failing to pay all wages due and owing
18 upon separation of employment and in a timely manner, failing to furnish accurate wage statements,
19 and failing to reimburse business expenses, all in order to decrease their costs of doing business and
20 increase their profits.

21 99. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs and
22 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing
23 business in order to undercut their competitors and establish and/or gain a greater foothold in the
24 marketplace.

25 100. At the time Plaintiffs and class members were hired, Defendants knowingly,
26 intentionally and wrongfully misrepresented to each of them their conformance with the California
27 Labor Code and IWC Wage Orders including proper payments required by law.
28

101. At all relevant times herein, Defendants held themselves out to Plaintiffs and class members as being knowledgeable concerning the labor laws of California.

102. At all times relevant herein, Plaintiffs and class members relied on and believed Defendants' representations concerning their conformance with California's wage and hour laws all to their detriment.

103. As a result of Defendants' intentional, willful, purposeful and wrongful misrepresentation of their conformance with the California Labor Code and IWC Wage Orders, Plaintiffs and class members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

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

105. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiffs and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

106. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiffs and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

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

107. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

1 108. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for
2 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
4 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
6 to the procedures specified in Labor Code § 2699.3.

7 109. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 110. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
13 including, but not limited to, the following:

- 14 (a) violation of Labor Code §§ 201-204, 210, 510, 1182.12, 1194, 1197, and
15 1198 for failure to timely pay all earned wages (including minimum wage
16 and overtime wages) owed to Plaintiffs and other aggrieved employees
17 during employment and upon separation of employment as herein alleged;
- 18 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
19 to Plaintiffs and other aggrieved employees and failure to pay premium
20 wages for missed meal periods as herein alleged;
- 21 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
22 and other aggrieved employees and failure to pay premium wages for missed
23 rest periods as herein alleged;
- 24 (d) violation of Labor Code § 226.2 for failure to pay all wages to piece-rate
25 workers for rest breaks to Plaintiffs and other aggrieved employees as herein
26 alleged;
- 27 (e) violation of Labor Code § 226 for failure to provide accurate itemized wage
28 statements to Plaintiffs and other aggrieved employees as herein alleged;

- (f) violation of Labor Code § 226.8 for willful misclassification of Plaintiffs and other aggrieved employees as independent contractors as herein alleged;
- (g) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- (h) violation of Labor Code §§ 2800 and 2802 for failure to reimburse necessary business expenses to Plaintiffs and other aggrieved employees as herein alleged.

111. Plaintiffs are “aggrieved employee” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore are properly suited to represent the interests of all other aggrieved employees.

112. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

113. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

114. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Lorenzo Rodriguez, Reyna Hernandez, and Cruz Antonio Rodriguez as the class representatives;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For general damages;

5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;
11. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;
12. For pre-judgment interest;
13. For civil penalties;
14. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 226(e), 1194, 2802(c), and 2698 *et seq.*; and
15. For such other relief as the Court deems just and proper.

Dated: August 14, 2020

AEGIS LAW FIRM, PC

By: _____


Jessica L. Campbell
Attorneys for Plaintiffs